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SPECIAL COMMITTEE ON THE SITUATION WITH REGARD TO THE IMPLEMENTATION OF THE DECLARATION ON THE GRANTING OF INDEPENDENCE TO COLONIAL COUNTRIES AND PEOPLES

GIBRALTAR

Working paper prepared by the Secretariat

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GIBRALTAR 1/

I. GENERAL

1. Gibraltar is a narrow peninsula extending southward from the south-west coast of Spain, to which it is connected by an isthmus about 1.6 kilometres long. The Spanish port of Algeciras lies 8 kilometres across the Strait of Gibraltar to the south. According to the United Kingdom of Great Britain and Northern Ireland, the area of Gibraltar is 5.86 square kilometres, and according to Spain, it is 4.8 square kilometres.

2. According to the census of Gibraltar taken on 14 October 1991, Gibraltar's civilian population in 1991 was 28,074, consisting of 20,022 Gibraltarians, 5,182 other British subjects, including families of British servicemen stationed in Gibraltar, but excluding servicemen, and 2,870 aliens.

II. POLITICAL DEVELOPMENTS

A. General

3. Detailed information on the Territory's constitution, general elections, public service and other related developments is contained in the previous working paper on Gibraltar prepared by the Secretariat in 1994 (A/AC.109/1195).

B. Recent developments

4. According to press reports, in 1994, the Minister of State for the Armed Forces of the United Kingdom, Mr. Nicholas Soames, visited Gibraltar. 2/ On 7 July 1994, the British Forces, Gibraltar, issued the following press release:

> "The study into the future composition of the Ministry of Defence presence on the Rock, as a result of last year's policy review announced in September by the Commander British Forces, has been approved by the Secretary of State for Defence. The 1993 policy review determined that the United Kingdom's defence requirements and interests in Gibraltar needed five core functions. These are the continued presence of Windmill Hill Signal Station and the Maritime Data Centre, the nuclear warship berthing facilities, access to the airfield, the retention of the Gibraltar Regiment in its present form and the headquarters and supporting infrastructure for the North Atlantic Treaty Organization (NATO) and national roles of the Commander British Forces. In addition it has been decided to maintain ammunition and fuel storage facilities. The Gibraltar Regiment, together with the naval and Royal Air Force single service elements, will assume responsibility for the day to day administration of all servicemen. In future the Garrison will be supported by a single logistic unit. The Gibraltar Logistic Unit will be formed next month from the Gibraltar Supply and Transport Unit and the Families Housing Organization. During the following year it will incorporate the Gibraltar Engineering and Maintenance Unit and the Commander of the Port's Department. The current,

well known, Management Plan seeks to reduce service and civilian levels from about 900 servicemen and women and 1,250 civilians today, to about 700 and 950, respectively, by mid 1997. The results of the review being announced today do not change these figures. From mid-1997, the Garrison will reduce further so that by mid-1999 about 500 servicemen and women will be employed in Gibraltar. In the same time-scale, mid-1997 to mid-1999, the directly employed Ministry of Defence civilian workforce will reduce to between 350 and 700. The precise number will depend on the amount of work transferred from the Ministry of Defence into the Gibraltar civilian market. As is already the case any reductions in civilian manpower will be phased to avoid flooding the job market, and where employees are made redundant every effort will be made to retrain and resettle them. The recently formed Joint Economic Forum is a very important first step. For its part, the Ministry of Defence is already looking at ways to help the workforce prepare themselves for future alternative employment. Rear Admiral Jeremy Sanders hopes very much that all parties will be able to work together to achieve these inevitable reductions as smoothly as possible."

III. ECONOMIC CONDITIONS

A. General

5. Gibraltar has no known natural resources and lacks agricultural land. The industries, trades and services in the Territory are mainly involved in supplying the needs of its population and of the large number of visitors to the Territory. The economy of Gibraltar is largely dependent on tourism and the provision of financial services such as banking, insurance, shipping and portfolio management.

6. According to the administering Power, the Territory's per capita gross domestic product for the 1991/92 fiscal year was estimated at £10,625, compared with £8,271 in 1989/90 and £8,486 in 1990/91.

B. Public finance

7. The report of the administering Power indicates that in 1991/92, revenue totalled £87.2 million and expenditure amounted to £50.1 million.

8. At 31 March 1992, the public debt of Gibraltar stood at £87.4 million.

9. The legal tender of the Territory is the pound sterling. The notes in circulation as at 31 March 1992 amounted to £12.6 million.

C. Trade

10. The total amounts of imports and exports in 1992 were £327.5 million and £93.0 million, respectively. Exports of goods of local origin remained negligible and the Territory continued to depend on the entrepôt trade,

consisting of re-exports of petroleum and petroleum products supplied to shipping. Approximately 33 per cent of Gibraltar's non-fuel imports originated in the United Kingdom. Japan, Spain and Denmark were the Territory's other main sources of supplies. In 1992, foodstuffs accounted for approximately £36 million, or 11 per cent of Gibraltar's total imports.

D. Investment, finance and banking

11. Detailed information on investment, banking and financial institutions in the Territory is contained in the previous working paper on Gibraltar prepared by the Secretariat in 1994 (A/AC.109/1195).

E. Transportation, communications and utilities

12. Detailed information on transportation, communications and utilities in the Territory is contained in the previous working paper prepared by the Secretariat in 1994 (A/AC.109/1195). Updated information on the subject is set out below.

13. At 31 December 1992, a total of 34,177 vehicles were registered in the Territory, an increase from 30,319 vehicles registered a year before.

14. In 1992, a total of approximately 88,000 persons arrived in the Territory by air and 92,000 by sea (compared with 97,000 and 64,000, respectively, in 1991). Gibraltar Airways maintains daily scheduled services to the United Kingdom and to Morocco.

15. In 1992, the digital telephone system and exchange had a capacity of 24,000 lines, compared with 14,000 lines in 1990. The total number of telephone stations equalled 18,544 in December 1992, an increase of 667 over 1991.

16. The Electricity Department of the Government of Gibraltar continued to be responsible for the electricity supply of the Territory. During the period under review, a total 98,861,760 of kilowatt-hours were generated.

17. At the end of 1992, there were 8,198 licensed television sets in Gibraltar, compared with 7,898 sets in 1991.

IV. SOCIAL AND EDUCATIONAL CONDITIONS

A. Labour

18. At December 1991, the last year for which data are available, the workforce in Gibraltar totalled 14,581 and the total number of unemployed stood at 1,061. Unemployment benefits were paid out of the Social Insurance Fund. Since 1978, public sector wages and salaries have been equated at full parity with those in the United Kingdom.

B. Human rights and the status of women

19. The Gibraltar (Constitution) Order of 1969 guarantees the protection of the fundamental rights and freedoms of the individual and the maintenance of a Supreme Court with unlimited jurisdiction to hear and determine any civil or criminal proceedings under any law and with such jurisdiction and powers as are conferred upon it by the Constitution of Gibraltar, or any other law.

20. The courts of law of the Territory consist of a Court of First Instance, a Magistrates' Court, a Court of Appeal and a Supreme Court. The Substantive Law of the Territory is contained in Orders in Council and enactments of the Parliament of the United Kingdom that apply to Gibraltar, as well as in locally enacted ordinances, subsidiary legislation, the common law and the rules of equity in force in the United Kingdom, so far as they are applicable to the Territory.

21. The status of women in Gibraltar, whether married or single, and with or without family responsibilities, is similar to that enjoyed by women in the United Kingdom. The Social Security (Insurance) Ordinance of Gibraltar provides for the payment of a variety of benefits and allowances to expectant mothers and widows.

C. Crime and crime prevention

22. According to the administering Power, during 1992, the last year for which data are available, 1,015 minor and 3,745 serious crimes were reported, compared with 1,188 and 3,605, respectively, in 1991. The serious crimes were as follows (with 1991 figures given in parentheses): theft, 1,452 (1,485); criminal damage, 726 (705); dangerous drugs, 613 (527); violence against individuals, 468 (437); burglary, 315 (294); sexual offences, 20 (30); robbery, 15 (12); and other offences, 136 (115). The reported increase in illicit trafficking from and via Gibraltar was a matter of concern. 3/

23. There is one correctional institution in Gibraltar. The supervision of the prison is carried out by the Prison Board in accordance with the Prison Ordinance of the Territory.

D. Environment

24. The 1973 Washington Convention on International Trade in Endangered Species of Wild Fauna and Flora has been extended to apply to Gibraltar as a dependent Territory for which the United Kingdom, a signatory to the Convention, has responsibility. The Endangered Species (Imports and Exports) Ordinance of 1976 gave effect in the Territory to the provisions of the Washington Convention. The Animals and Birds Ordinance protects fauna in the Territory and the Heritage Trust Ordinance provides for the protection of sites of natural beauty and scientific interest.

E. Housing

25. Overcrowding continues to be considered a major social problem in the Territory. According to the 1991 population census, Gibraltar had an average population density of 45.8 persons per hectare, excluding servicemen, visitors and transients. It has been estimated that 14 per cent of the housing stock is overcrowded.

F. Public health

26. The state of health and nutrition is reported to be good and to comply with the standards expected in developed countries. There have been no outbreaks of epidemic or endemic diseases. The principal causes of death are cardiovascular, cerebrovascular, malignant and respiratory (excluding neoplasms) diseases.

G. Education

27. Education is free for all children up to "A" level standard and is compulsory for those between 5 and 15 years of age. In 1992, 4,681 pupils were enrolled in the government schools. The expenditure on public education in 1991/92 totalled £10.2 million.

V. ACTION BY THE GENERAL ASSEMBLY

28. The Special Political and Decolonization Committee (Fourth Committee) of the General Assembly considered the question of Gibraltar at its 3rd, 5th, 10th and 13th meetings, between 11 and 28 October 1994.

29. At the 3rd meeting, on 11 October, with the Committee's consent, Mr. Joe Bossano, Chief Minister of Gibraltar, made a statement in which he said that it was not possible to decolonize Gibraltar unless its decolonization reflected the democratically expressed wishes of the inhabitants of the Territory. He emphasized that Gibraltar did not wish to find itself, in the year 2000, the one remaining colonial Territory preventing the fulfilment of the resolution of the General Assembly calling for the total eradication of colonialism by the start of the twenty-first century and called upon the Committee to support Gibraltar so as to ensure that that state of affairs did not arise (A/C.4/49/SR.3, paras. 19 and 24).

30. At the 5th meeting of the Committee, on 12 October 1994, the representative of the United Kingdom stated that the United Kingdom's record on decolonization was a good one and had been well documented. His Government continued to take seriously its obligations under the Charter of the United Nations to develop self-government in its dependent Territories and, in cooperation with the locally elected Governments, to ensure that their constitutional frameworks continued to meet the wishes of their peoples. Each of the dependent Territories held regular and free elections at which all parties could advocate whatever constitutional proposals they wished. His Government also took seriously its obligations towards the economic needs of its dependent

Territories. Many elected Governments in the United Kingdom dependent Territories expended considerable effort to attract foreign investment, recognizing its benefits. He welcomed the acknowledgement that the people of the Non-Self-Governing Territories should decide their future status, and that attention should be paid to the specific needs of those Territories (A/C.4/49/SR.5, para. 5).

31. At the same meeting, the representative of Spain, stated that the reintegration of Gibraltar into Spain had the full support of Spanish political forces, regardless of ideology. The decolonization of Gibraltar was not a question of self-determination but rather of the re-establishment of a State's territorial integrity. His Government was not alone in taking that position which, in accordance with the principles of General Assembly resolution 1514 (XV) of 14 December 1960, had been clearly established also by successive Assembly resolutions. Year after year, the Assembly had invited the Governments of Spain and the United Kingdom to negotiate an end to that colonial situation and Spain fully intended to continue to do so, on the basis of the Brussels Declaration endorsed by both parties on 27 November 1984 (A/39/732, annex). Even though the issue of self-determination was not involved, the Spanish authorities took full account of the legitimate interests of the population of Gibraltar. They desired Gibraltar's prosperity and progress on the basis of a sound economy, in which contraband activities and illicit trafficking would have no part, although they were currently tolerated by the local authorities and ignored by the administering Power. Spain also hoped that the representatives of the population would return to the negotiating process, which they themselves had chosen to abandon in 1988, for it was the appropriate framework for making their points of view known (A/C.4/49/SR.5, paras. 8 and 9).

32. At the 10th meeting, on 26 October, the Chairman of the Committee drew attention to a draft consensus on the question of Gibraltar submitted by him and contained in document A/C.4/49/L.6 (see A/C.4/49/SR.10).

33. At its 13th meeting, on 28 October, the Committee adopted draft decision A/C.4/49/L.6 without objection (A/C.4/49/SR.13).

34. On 9 December 1994, the General Assembly, on the recommendation of the Committee, adopted the following text without a vote as representing the consensus of the members of the Assembly (decision 49/420):

> "The General Assembly, recalling its decision 48/422 of 10 December 1993 and recalling at the same time that the statement agreed to by the Governments of Spain and the United Kingdom of Great Britain and Northern Ireland at Brussels on 27 November 1984 stipulates, inter alia, the following:
>
> > 'The establishment of a negotiating process aimed at overcoming all the differences between them over Gibraltar and at promoting cooperation on a mutually beneficial basis on economic, cultural, touristic, aviation, military and environmental matters. Both sides accept that the issues of sovereignty will be discussed in that process. The British Government will fully maintain its commitment to

honour the wishes of the people of Gibraltar as set out in the preamble of the 1969 Constitution',

takes note of the fact that, as part of this process, the Ministers for Foreign Affairs of Spain and of the United Kingdom of Great Britain and Northern Ireland hold annual meetings alternately in each capital, the most recent of which took place at Madrid on 1 March 1993, and urges both Governments to continue their negotiations with the object of reaching a definitive solution to the problem of Gibraltar in the light of relevant resolutions of the General Assembly and in the spirit of the Charter of the United Nations."

VI. CONSIDERATION BY THE SPECIAL COMMITTEE

35. The Special Committee considered the question of Gibraltar at its 1433rd meeting, on 12 July 1994.

36. At the same meeting, with the Special Committee's consent, Mr. Joe Bossano, Chief Minister of Gibraltar, made a statement in which he said the following (A/AC.109/PV.1433, p. 3):

"The position of my Government ... has been that it is impossible to have decolonization without self-determination. Decolonization does not take place until the exercise of self-determination by the native population of the colonial Territory has manifestly and independently been given effect."

37. At the same meeting, the representative of Spain reiterated the position of his Government on the question of Gibraltar (A/AC.109/PV.1433, pp. 24-25).

38. Also at its 1433rd meeting, the Special Committee decided without objection to continue its consideration of the item at its next session, subject to any directives the General Assembly might give at its forty-ninth session. The Committee also decided to transmit the relevant documentation to the Assembly in order to facilitate consideration of the item by the Special Political and Decolonization Committee (Fourth Committee).

VII. FUTURE STATUS OF THE TERRITORY

39. In his address to the General Assembly on 30 September 1994, Mr. Javier Solana Madariaga, Minister for Foreign Affairs of Spain, stated (A/49/PV.12):

"The decolonization of Gibraltar is a priority goal of the Spanish Government. The General Assembly has clearly established the doctrine that the decolonization of Gibraltar is a case not of self-determination but of the restoration of Spain's territorial integrity. I wish here to reiterate the Spanish Government's firm resolve to continue the process of negotiation with the Government of the United Kingdom, in a constructive spirit and on the basis of the Declaration of Brussels of 27 November 1984, taking duly into account the legitimate interests of the population. The

Government of Spain expresses its profound hope that these negotiations will put an end to this colonial anachronism."

40. It will be recalled (see A/AC.109/1195, para. 31) that on 20 April 1994, the Congress of Deputies of Spain unanimously adopted the following resolution:

"The Congress of Deputies calls on the Government to take all the actions necessary to recover the exercise of Spanish sovereignty over Gibraltar and eliminate the British colonial presence."

41. Mr. Douglas Hurd, Secretary of State for Foreign and Commonwealth Affairs of the United Kingdom, made no reference to Gibraltar in his address to the General Assembly on 28 September 1994 (see A/49/PV.8). However, the Foreign and Commonwealth Office issued the following statement in London on 30 September 1994:

"In view of the Spanish Foreign Minister's statement to the United Nations General Assembly on 30 September about Gibraltar, the British Government wishes to make clear that its views on Gibraltar are well known to the Spanish Government. These include Britain's commitment to the people of Gibraltar, as enshrined in the 1969 Constitution, and its commitment to the negotiating process with Spain (the Brussels process)."

42. On 20 December 1994, during parliamentary debates, Mr. A. Goodlad, Minister of State, Foreign and Commonwealth Office, reconfirmed the importance of the Brussels process with regard to the future status of Gibraltar.

Position of the Government of Gibraltar

43. On 10 January 1995, the House of Assembly of Gibraltar adopted the following motion: 4/

"This House notes that:

"1. All colonial peoples have an inalienable right to self-determination in accordance with Article 73 of the Charter of the United Nations.

"2. The elected members of the Gibraltar Legislative Council issued a unanimous statement in September 1994 stating that the soil of Gibraltar should belong to no one but the people of Gibraltar.

"3. General Assembly resolution 2734 (XXV) of 16 December 1970 makes it clear that in the event of a conflict between the obligations of Member States under the Charter and their obligations under any other international agreement, their obligations under the Charter should prevail.

"4. Article 1 of the 1976 International Covenant on Civil and Political Rights, which was extended to Gibraltar without qualification, states: 'All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development'.

"5. The annual statements on decolonization by the European Union Presidency before the United Nations Fourth Committee explicitly recognize that all peoples have the right to self-determination irrespective of population, size or geographical location.

"6. The United Kingdom representative declared before the United Nations on 3 November 1982 that 'it is not acceptable that our clear obligations towards the Falkland Islands under Article 73 of the Charter should be smudged and blurred into an off-hand phrase about taking their interests only into account'. What a far cry from a clear affirmation of the principle of self-determination enshrined in the Charter and in the practice of this Organization.

"7. Like the Falkland Islanders, the people of Gibraltar wish to maintain close political, constitutional and cultural links with the United Kingdom.

"8. Her Majesty's Government has, in the case of the Falkland Islands Constitution of 1985, reflected its commitment to self-determination for the peoples of the Falkland Islands by including the following recital: 'Whereas the peoples have the right of self-determination and by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development and may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit and international law. And whereas the realization of the right of self-determination must be promoted and respected in conformity with the provisions of the Charter of the United Nations'. This House therefore declares that the people of Gibraltar have an inalienable right to self-determination and formally requests Her Majesty's Government to take immediate steps to amend the 1968 Gibraltar Constitution Order by Order in Council to provide an introductory paragraph to chapter 1 identical to that contained in the 1985 Falkland Islands Constitution Order."

Anglo-Gibraltarian discussions

44. During the period under review, discussions between the representatives of the administering Power and the territorial Government continued. Among the issues discussed during those talks were the following: future political status of Gibraltar; Gibraltar's status in the European Union; constitutional developments in the Territory; economic and social advancement of Gibraltar; and problems of crime and crime prevention.

Anglo-Spanish negotiations

45. The negotiating process established by the Brussels joint communiqué of 27 November 1984 continues. The latest round of negotiations was held in London in December 1994. The joint statement by the United Kingdom Secretary of State for Foreign and Commonwealth Affairs and the Minister for Foreign Affairs of Spain issued on 20 December 1994 at the London round of negotiations is reproduced below:

"The British Foreign Secretary, Douglas Hurd, and the Spanish Foreign Minister, Javier Solana, met in London on 20 December 1994 under the terms of the Brussels Agreement of 1984. They reaffirmed their commitment to the Brussels process. They agreed on the importance of Gibraltar developing a sustainable economy. They recognized that there was a problem of illegal trafficking, in particular in drugs, in the Gibraltar area and agreed on the need to establish an effective mechanism, which should include the competent local authorities, to improve consultation and cooperation. On the basis of normal and regular movement between Gibraltar and the neighbouring territory, and in a spirit of cooperation, they will review progress towards agreeing on such a mechanism in the new year."

46. In accordance with the above-mentioned decisions, Anglo-Spanish negotiations continued with the participation of the Government of Gibraltar. Meetings were held at Seville, Spain, on 26 January 1995 and in London on 27 April 1995.

Airport Agreement

47. As previously reported, according to the administering Power and subject to the necessary legislation being put in place, the United Kingdom and Spain agreed to the development of the Gibraltar airport jointly coordinated by the British and Spanish authorities. The British Government had made clear at the time that they would not impose it on Gibraltar if the latter did not wish to implement it (see also A/AC.109/1007, paras. 22 and 23; A/AC.109/1074 and Corr.1, paras. 17-23; and A/AC.109/1195, paras. 33-35).

48. During the period under review, there have been no further developments. Both parties maintained their positions on the question of the implementation of the Agreement.

Notes

1/ The information contained in the present paper has been derived from published reports and from information transmitted to the Secretary-General by the Government of the United Kingdom of Great Britain and Northern Ireland under Article 73 e of the Charter of the United Nations on 24 September 1994.

2/ The Gibraltar Chronicle, 8 and 11 November 1994.

3/ Financial Times, 5 July 1994; Area 18, 28 February and 27 April 1995; Gibraltar Chronicle, 7 April 1995; El Periódico, 26 December 1994, and 27 January 1995; ABC, 3 June and 22 December 1994 and 22 January 1995; La Voz de Galicia, 19 January 1995; El Mundo, 24 December 1994; Expansion, 21 December 1994; Washington Times, 19 December 1994; El País, 10 May and 19 December 1994; The Independence, 14 December 1994; The Times, 15 December 1994; and The Vanguardia, 16 May 1994.

4/ The Gibraltar Chronicle, 11 January 1995.

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SPECIAL COMMITTEE ON THE SITUATION
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OF INDEPENDENCE TO COLONIAL
COUNTRIES AND PEOPLES

EAST TIMOR

Working paper prepared by the Secretariat

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I. GENERAL

1. The Territory of East Timor comprises the eastern part of the island of Timor, which is located at the top of the chain of islands forming the Republic of Indonesia; the enclave of Oecusse Ambeno; the island of Atauro, off the northern coast of Timor; and the island of Jaco, off its extreme eastern tip. It lies between latitudes 8° 17'S and 10° 22'S and longitudes 123° 25'E and 127° 19'E. The 1980 census recorded the total population of the Territory at 555,350. According to the latest estimates, as of 1993, the population of the Territory was 783,000 (ST/ESA/STAT/SER.A/193).

II. POLITICAL DEVELOPMENTS

A. Background

2. According to Indonesian Law 7/76 of 17 July 1976, East Timor is a province or a "first-level region" of Indonesia with a Government consisting of a "Regional Secretariat" and a "Regional House of Representatives". East Timor is represented in the National House of Representatives and in the People's Consultative Assembly of Indonesia.

3. In its resolution 32/34 of 28 November 1977, the General Assembly rejected the claim that East Timor had been integrated into Indonesia, inasmuch as the people of the Territory had not been able to exercise freely their right to self-determination and independence.

B. Recent developments

4. According to press reports, on 14 July 1994, a group of East Timorese students held a march in Dili to protest the alleged "Islamization" of the Territory. The Indonesian police dispersed the demonstrators, injuring some 20 persons. Published reports also indicate that two participants were arrested and tortured by the military. Monsignor Belo, the Catholic Bishop of East Timor, stated in connection with the incident that the problem of East Timor would be resolved only after the Indonesian military had withdrawn from the Territory. He also expressed concerns over the distribution in East Timor of pamphlets containing calls for the "Islamization" of the population and warned against possible religious clashes. The Foreign Minister of Indonesia, in connection with the events of 14 July, reportedly refuted allegations of religious intolerance and police brutality. 1/ However, the Permanent Mission of Indonesia to the United Nations described the above incident as follows:

> "On 14 July 1994, a few East Timorese students held a protest against rude behaviour of two low-ranking soldiers who allegedly indulged in insulting behaviour against the Santo Yoseph Remexio church. In connection with this incident, the local military commander, Col. Johnny J. Lumintang, apologized to the Catholics in East Timor. The Dili District Court tried the two accused individuals and they were sentenced to prison and dismissed from the armed forces."

5. Press reports indicate that at the end of July 1994, six Indonesian soldiers were killed during clashes with East Timorese guerrillas near Laleia, approximately 70 kilometres from Dili. 2/

6. According to press reports, on 1 August 1994, the Indonesian military barred protests and demonstrations in East Timor in connection with a visit to the Territory by a group of Japanese lawmakers and journalists. 3/ The Permanent Mission of Indonesia to the United Nations noted in that connection that in addition to a group of Japanese lawmakers and journalists, the following personalities have visited East Timor during 1994:

- Five members of the Japanese Diet, consisting of two MPs from the Liberal Democratic Party, two MPs from the Social Democratic Party and one from the New Party, from 10 to 13 August 1994. They were accompanied by two journalists from the NHK and two journalists from Asahi TV;

- Mr. Gerhart Baum, a Member of Parliament of the Federal Republic of Germany and Former Minister for Home Affairs, accompanied by Mr. Wolfgang Sachsenroder, Head of the Regional Office of the Friedrich Naumann Foundation for South-East Asia and East Asia, on 12 and 13 August 1994;

- Six staff members of the United States Congress from 21 to 28 August 1994;

- Six members of the Anglo-Indonesian Parliamentary Group, consisting of three MPs from the Conservative Party and three MPs from the Ulster Unionists from 18 to 20 September 1994;

- A delegation of four members of the Australian Parliament, consisting of two Liberal Party MPs, one Labour Party MP and one secretary, from 25 September to 1 October 1994;

- Five Members of the New Zealand Parliament, consisting of two MPs from the National Party, two MPs from the Labour Party and one MP from the First New Zealand Party, from 29 October to 1 November 1994;

- Approximately 40 foreign journalists attending the APEC meeting in November 1994, including one Portuguese journalist;

- Special envoys of the United Nations Secretary-General, Mr. Francesc Vendrell and Mr. Tamrat Samuel, from 30 November to 3 December 1994.

7. On 25 August, Bishop Belo inaugurated in East Timor a Commission on Peace and Justice. It was expected that the commission would have offices in 13 towns, 63 districts and 442 villages throughout the Territory. The Commission, according to Bishop Belo, "aims at learning about and analysing problems related to justice and peace ... to help people fully understand their role and function in the fields of justice, peace and human rights". 4/

8. In August 1994, the Indonesian Government reportedly announced its intention to relocate some 1,000 Catholic families from Java and Bali to East Timor. That decision reportedly was taken within the framework of the Indonesian "transmigration programme". 5/

9. According to press reports, on 11 September 1994, the Indonesian military arrested two members of the Frente Revolucionária de Timor Leste Independente (FRETILIN). 6/ Colonel Syahnakry, the Indonesian military commander in East Timor, confirmed the arrests and stated that in East Timor "there were only some 228 members of FRETILIN with 107 rifles and a small quantity of ammunition". He also reiterated the validity of the clemency decree proclaimed by the President of Indonesia for FRETILIN fighters who surrender.

10. It was further reported that in October 1994, the East Timorese resistance fighters had announced that they would be prepared to announce a unilateral cease-fire and "suspend all military activities, except as demands of legitimate defence", if the Indonesian authorities agreed to free imprisoned East Timorese leader José Alexandre "Xanana" Gusmão and to hold immediate negotiations "at the highest level" with the resistance fighters. 7/ The same sources indicated that on 11 October, the Indonesian military had rejected the unilateral cease-fire declared by the resistance fighters. The Indonesian military spokesman in East Timor, Major Simbolou, reportedly stated the following: "It's good that they have called for a cease-fire but that's not enough. They must now ... surrender themselves and their weapons. We are prepared to grant them amnesty if they surrender. But there will be no negotiations or dialogue with them."

11. According to press reports, Bishop Belo announced on 27 October that he was working with "all parties", including the Indonesian Government, to define a "special status" for East Timor for a transitional period towards an act of self-determination. 8/ According to the Permanent Mission of Indonesia to the United Nations Minister/State Secretary Moerdiono said that the Government of Indonesia would not give special autonomy to East Timor, which would make its status different from 26 Indonesian provinces.

12. The United States Information Service reported that on 12 November 1994 "there was a small demonstration in front of the United States Embassy in Jakarta. The demonstrators were seeking to express their views on the situation in East Timor. Several entered the Embassy compound and remained there". The demonstration took place one day before the arrival in Jakarta of President Bill Clinton for the meeting of the Asia-Pacific Economic Cooperation (APEC) forum. The demonstration had been preceded by a letter dated 7 November 1994 from Mr. Gusmão addressed to President Clinton, in which he expressed his gratitude to the United States for its past attention to East Timor and appealed for the support of President Clinton in raising with President Suharto on the occasion of the APEC summit the need for Jakarta to display greater political goodwill in addressing the problems. 9/ Some 29 East Timorese protestors who entered the United States Embassy compound staged a 12-day sit-in there and demanded the immediate release of Mr. Gusmão. On 23 November, the protesters were allowed by the Government of Indonesia to leave the country for any country of their choice. On the same date, they left Indonesia for exile in Portugal. 10/

13. Press reports stated that a number of pro-independence demonstrations were held in East Timor during the period 12-24 November 1994. 11/ The same sources indicated that the Indonesian security forces used truncheons and tear gas to disperse the protestors; they also resumed night-time detentions of youths suspected of having pro-independence sympathies. Approximately 135 East Timorese were reportedly arrested for participating in those demonstrations. Many of them reportedly were taken from their homes and beaten by the Indonesian security forces. The police acknowledged 80 arrests. 12/ In November 1994, the Indonesian authorities announced that 30 East Timorese would be prosecuted for alleged involvement in pro-independent protests in East Timor between 10 and 24 November. 13/

14. It was later reported 14/ that on 26 November, a pro-Indonesian demonstration had been held in Dili. The demonstration was reportedly disrupted by a group of pro-independence East Timorese.

15. On 14 January 1995, as reported by the press, the Indonesian security task force (Tintim Saka) killed six East Timorese near the village of Gauana. The Indonesian authorities stated that the six victims were FRETILIN guerrillas. 15/ In February, the United States, Australia and Canada expressed their concern to the Indonesian authorities over the alleged killing of the six FRETILIN members. They stated that they had enough evidence to contradict official Indonesian accounts that the incident had been a clash between troops and anti-Indonesian guerrillas. 16/ Also in February, the Indonesian military established a special investigation team to examine the incident. 17/ Following the investigation, the Indonesian Government acknowledged that the military had committed "irregularities" in the killing of the six East Timorese and "had acted beyond established procedures". A special inquiry was initiated following the above acknowledgement. 18/ On 24 February, it was announced that the Indonesian military had established a 36-member committee to investigate the killings. 19/ On the same date it was also announced that the Indonesian military at Liquica had arrested 10 East Timorese for questioning on charges of conspiring against the Government. 20/ On 27 February, the Indonesian military admitted that the six people killed by the soldiers were "victims of mistaken identity". 21/ On 5 April, the Indonesian army decided to court-martial two soldiers who had been found guilty in the killing of the six East Timorese on 14 January. 22/

16. According to press reports, 23/ on 1 January 1995, an ethnic riot took place at Baucau following an alleged killing of an East Timorese by an Indonesian immigrant. Some 200 youths reportedly burned a market, shops and houses belonging to Indonesian merchants. Police clashed with the rioters and dispersed the crowd. It was further reported that three persons had been killed and three injured during the incident. Police reportedly arrested 20 East Timorese for questioning. In accordance with the press release of the Indonesian Mission to the United Nations of 18 November 1994, the above incident was described as follows:

> "On 1 January 1995, an outbreak of violence occurred as a result of a personal quarrel between two traders, one from Sulawesi and one from East Timor, in which the latter was killed. The police officials thereafter contained the violence and restored order. The South Sulawesi man was promptly arrested, tried by the Dili District Court and sentenced to

11 years in prison for the murder of the East Timorese trader on 17 January 1995."

17. Press reports 24/ in February 1995 indicated that in that month several so-called "Ninja gangs", which were allegedly operating with the connivance of the Indonesian military, had attacked and burned residences of many pro-independence East Timorese. Four East Timorese youths were reported to have been abducted by those gangs. Bishop Belo, speaking on a Lisbon radio station on 10 February 1995, said that the international community should help to guarantee the return of East Timor to tranquillity. On 15 February, the Indonesian military reportedly arrested 12 alleged members of the "Ninja gangs" and stated that the 12 arrested individuals were believed to be members or sympathizers of an urban pro-independence movement known as "Clandestine". 25/

18. On 15 February, Mr. José Antonio Neves, an East Timorese theology student and Secretary of the Student Resistance Organization, was sentenced by an Indonesian court to four years imprisonment. Mr. Neves had been arrested in May 1994 at Malang, Central Java, while sending faxes to human rights monitors overseas, citing violations of human rights in East Timor. 26/

19. On 6 March 1995, Indonesian military authorities arrested some 30 pro-independence activists in East Timor. Colonel Kiki Syahnakri, Chief of the East Timor Military Command, said that the arrested East Timorese were "supporters and followers of FRETILIN". 27/

20. According to press reports, 28/ on 30 May 1995, a group of 17 East Timorese refugees arrived by boat in Darwin, Australia. The same sources indicated that the refugees were members of the Clandestine Resistance front and had fled from East Timor for political reasons.

III. HUMAN RIGHTS SITUATION

21. A member of the Commission on Human Rights since 1991, Indonesia has repeatedly affirmed its commitment to international human rights principles.

22. According to a United States Department of State report, 29/ in East Timor "troop levels remained unjustifiably high. Somewhat greater access was permitted to foreign journalists and others ... although some representatives of non-governmental organizations and foreign journalists continued to encounter difficulties or were denied access to East Timor. About 6,000 army troops from outside East Timor reinforced the normal garrison there. There were also about 3,000 police in East Timor".

Disappearances

23. With regard to disappearances, the report of the State Department indicated that the efforts of the Indonesian Government to account for the missing and dead from the 12 November 1991 military shootings of civilians in Dili remained inadequate. No additional cases of those still listed as missing were resolved during 1994. 29/

Torture and other cruel, inhuman or degrading treatment or punishment

24. The report further stated that security forces continued to employ torture and other forms of mistreatment, although the use of torture had declined. Torture continued to be used before releasing suspects to police custody, although its incidence decreased. Political prisoners were usually mixed with the general prison population, although high-profile political prisoners were segregated. 29/

Arbitrary arrest, detention or exile

25. According to the report, in the areas where active guerrilla movements exist, people were routinely detained without warrants, charges or court proceedings. Bail was rarely granted, especially in political cases. Military authorities continued the practice of detaining people without charges for short periods and then releasing them, with the requirement that they report weekly or daily to police. 29/

Arbitrary interference with privacy, family, home or correspondence

26. The report also stated that judicial warrants for searches were required except for cases involving subversion, economic crimes and corruption, although security agencies regularly make forced or surreptitious entries. The "transmigration policy" of the Indonesian Government (also see para. 8 above) was considered by human rights monitors to be a violation of the rights of the indigenous people as well as of the transmigrants. 29/

Freedom of speech and press

27. According to the report, during 1994, the staff of East Timor's only newspaper were subjected to various forms of intimidation, and a vehicle owned by the newspaper was burned following the newspaper's coverage of the mid-July demonstrations at Dili, which was at variance with the official account. In 1994, the authorities denied permission for non-governmental organizations and the local university to hold a seminar on development and local environment. Special permission from the Indonesian authorities continued to be required for foreign journalists to visit East Timor, although a number of group tours to the Territory were organized by the authorities for the media during 1994. Some journalists were denied access to the Territory. 29/

Freedom of peaceful assembly and association

28. As noted in the report, the Indonesian Government continued to place restrictions and control on the public marches and demonstrations in the Territory. During the period under review, several demonstrations were dispersed by the police, leaving a number of participants killed, injured or arrested (also see paras. 4, 13 and 16 above). 29/

Freedom of religion

29. With regard to the freedom of religion, the report points out that the Constitution provides for religious freedom. Two Indonesian soldiers found

guilty of provocative behaviour during a Catholic mass at Dili in July 1994 were court-martialled and in October 1994 were expelled from the army and sentenced to prison. 29/

Freedom of movement within the country, foreign travel, emigration and repatriation

30. According to the report, during 1994, the military continued to carry out security checks, which affected transportation and travel to and within the Territory, and occasionally introduced curfews in connection with military operations. 29/

31. During the period under review, Amnesty International issued two reports, entitled "East Timor - The Liquiza Killings" (February 1995) and "East Timor - Continuing Human Rights Violations" (February 1995). In those reports, Amnesty International reiterated its viewpoint that the Indonesian Government had to improve the human rights situation in the Territory. It regretted the fact that it had not been able to visit East Timor.

32. In February 1995 the Human Rights Watch/Asia issued a report, entitled "Indonesia/East Timor - Deteriorating Human Rights in East Timor", in which it called upon the Indonesian Government to take all necessary measures with a view to complying in full with international human rights standards. The Human Rights Watch/Asia regretted the fact that it had not been able to visit East Timor.

33. The United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Mr. Bacre Waly Ndiaye, issued a report on his mission to Indonesia and East Timor from 3 to 13 July 1994. The report is contained in document E/CN.4/1995/61/Add.1 dated 1 November 1994.

IV. ECONOMIC, SOCIAL AND EDUCATIONAL CONDITIONS

34. In the absence of information submitted by the administering Power under Article 73 e of the Charter of the United Nations and for reasons explained in paragraph 36 below, information on economic, social and educational conditions in the Territory during the period under review was derived from the submission of the Permanent Mission of Indonesia to the United Nations and is set out below:

> "According to East Timor Governor Abilio Jose Osorio Soares poverty and low-quality human resources remain major challenges and after these are dealt with, the goal of creating a prosperous, advanced and self-reliant East Timor could be accomplished. The statistics reflect that foreign and domestic investments now amount to a total of Rp 283.4 billion and these investments have provided employment for 28,923 workers in various sectors. (ANTARA News Agency, 25 and 27 January 1995)
>
> "Primary importance has to be accorded to East Timor's economy to make it more self-supporting. Mr. João Mariano De Sousa Saldhana, a research fellow at the Northern Territory University (NTU) and author of a book

entitled 'East Timor's Economy, Politics and Development', cited unemployment as an important social problem facing the region. He also addressed the fact that until now there was an unbalanced amount between the development fund provided by the Central Government and East Timor's own income. (ANTARA News Agency, 3 December 1994)

"The Ministry of Public Works has built bridges of a total length of 2,628 kilometres in the southern part of East Timor. In addition, it has constructed 446 kilometres of national level roads, 765 kilometres of provincial roads and 1,035 kilometres of regency level roads and 26 irrigation systems in the regencies of Liquisa and Viqueque. (ANTARA News Agency, 29 January 1995)

"The Governor of East Timor has emphasized the need to bolster investments in telecommunications to encourage foreign businesses to invest in the province. The local capital investment coordinating Board has informed us that businessmen from both Australia and local East Timorese will cooperate in the development of the Timor Gap project with a view to maximizing the gains to be derived from the project. (ANTARA News Agency, 30 January 1995)

"Efforts towards environment conservation in East Timor will be intensified. According to the Head of the Environment Section of East Timor, such efforts are fundamental to maintain the nature and environment in the region. (ANTARA News Agency, 8 October 1994)

"Banks in East Timor have accumulated funds of Rp 58 billion in the first semester of the 1994/1995 fiscal year, an increase of 34.24 per cent. According to the manager of the East Timor bank, the increase was caused by conversion into cash of government funds for the financing of several projects, including health projects, presidential instruction programme for backward regions and increases in salaries for civil servants. At the same time, it was noted that bank credit growth rate increased to Rp 17.92 billion or 40.26 per cent. The presence of banks have improved the economy and lifestyle of people in the province. As can be seen, an increasing amount of people are using the services of banks. It is hoped that this trend continues for it will contribute greatly to the development of the province. (ANTARA News Agency, 12 December 1994 and 12 February 1995)

"A total of 140 of East Timor's 442 villages received electricity. The rural electrification programme in the region failed to be fully implemented owing to the mountainous geographical conditions. The local branch of the electric company will continue to give priority to this project. (ANTARA News Agency, 6 December 1994)

"Eighteen State cooperatives and businesses are assisting in developing cooperatives and small businesses in East Timor. The East Timor provincial administration will provide the necessary support to encourage investment in the forestry sector. The industrial growth in the province is also encouraging. It has grown by an average of 24.9 per cent per year.

Small establishments have contributed to the growth of the industrial sector. (ANTARA News Agency, 28 November 1994)

"East Timor's health services have greatly improved since integration. According to the Head of the Local Population and Environment Office, Ms. Maria de Laourdes, adequate health facilities have been made available to most districts in the region. East Timor now has 67 public health centres and an addition of 2 hospitals to serve the population of 13 districts. (ANTARA News Agency, 9 September 1994)"

V. CONSIDERATION BY THE UNITED NATIONS 30/

35. Between 1961 and 1982, the General Assembly annually reviewed the question of East Timor and adopted resolutions on the basis of reports submitted by the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples. 31/ Since its thirty-eighth session, the General Assembly has deferred consideration of the item. 32/

36. Since 1977, the Government of Portugal, in its capacity as administering Power of East Timor, has annually informed the Secretary-General that, owing to conditions prevailing in the Territory, namely, the presence of armed forces of Indonesia, it has been de facto prevented from transmitting any information concerning East Timor under Article 73 e of the Charter. 33/ On 5 June 1995, the Permanent Mission of Portugal addressed to the Secretary-General a note verbale on the above subject (A/50/214).

37. At its thirty-seventh session, by resolution 37/30 of 23 November 1982, the General Assembly requested the Secretary-General to initiate consultations with all parties directly concerned, with a view to exploring avenues for achieving a comprehensive settlement of the problem, and to report to the Assembly at its thirty-eighth session. The Assembly requested the Special Committee to keep the situation in the Territory under active consideration and to render all assistance to the Secretary-General to facilitate implementation of the resolution.

38. Since 1983, the Secretary-General has kept the General Assembly regularly apprised of developments related to the exercise of his good offices. 34/ His most recent progress report, submitted to the Assembly at its forty-ninth session, is contained in document A/49/391.

39. The Secretary-General held the fifth round of discussions with the Foreign Minister of Indonesia and Portugal at Geneva on 9 January 1995. The information regarding the fifth round of discussions is contained in press releases SG/SM/5519 and SG/T/1923. On 9 May 1995, the following statement was issued by the Spokesman for the Secretary-General (SG/SM/5626):

"Notifications are being sent out to 30 East Timorese of various political views from both inside and outside East Timor to attend the All-Inclusive Intra-East Timorese dialogue contemplated in the Geneva communiqué issued at the conclusion of the fifth round of talks between

Indonesia and Portugal on 9 January. The dialogue is now scheduled to take place in Austria from 2 to 5 June.

"The sixth round of ministerial talks between Indonesia and Portugal under the Secretary-General's auspices will now take place at Geneva on 8 July."

40. The most recent round of the all-inclusive intra-East Timorese dialogue was concluded on 5 June 1995 in Austria. The following press release was issued on that day by the United Nations Information Service:

"Concluding an all-inclusive intra-East Timorese dialogue at Schlaining Castle, Austria, today, 30 East Timorese, representing a broad cross-section of political opinion from inside and outside the Territory, adopted the Burg Schlaining Declaration, calling for a continuation of the dialogue. The meeting was initiated by the Secretary-General in the context of his good offices on the question of East Timor.

"The declaration proposed to the Secretary-General the holding of another intra-Timorese dialogue with a view to continuing the debate on issues annexed to the declaration, while noting that despite the frank and open spirit in which the dialogue was conducted, the fundamental, different political options remained unchanged. Such meetings should precede each round of negotiations on the question of East Timor between the Foreign Ministers of Portugal and Indonesia.

"Adopted by consensus, the declaration reaffirms the need to implement measures in the field of human rights and other areas with a view to promoting peace, stability, justice and social harmony. It also reaffirms the necessity of the social and cultural development of East Timor to be based on the preservation of the cultural identity of the people, including the teaching of the Tetun and Portuguese languages.

"The declaration also calls for the involvement of all East Timorese without discrimination in the development of the Territory in a climate of mutual understanding, tolerance and harmony.

"The participants affirmed the importance of the ongoing negotiations between the Governments of Portugal and Indonesia under the auspices of the Secretary-General, which aim at finding a just, comprehensive and internationally acceptable solution to the question of East Timor, according to the provisions, letter and spirit of General Assembly resolution 37/30. The declaration notes with appreciation the consultations undertaken by the United Nations with the various shades of Timorese opinion, aiming at their gradual involvement, as well as the availability of the Ministers of Foreign Affairs of Portugal and Indonesia for direct dialogue with Timorese personalities. The declaration also requests the Secretary-General and the two Governments to facilitate the free movement of Timorese families to and from East Timor.

"The declaration pays special tribute to the contribution of the Catholic Church in East Timor and the participation of

Dom Carlos Filipe Ximenes Belo, Apostolic Administrator of the Diocese of Dili, in the dialogue, whose concrete proposals for improving the physical and spiritual conditions of life of the East Timor people were agreed upon.

"Facilitated by the United Nations, the intra-East Timorese dialogue served to explore practical ideas that could have a positive impact on the situation in East Timor and assist in creating a conducive atmosphere for a solution of that question. The Government of Austria provided meeting facilities and accommodation for all participants. A number of other Governments also extended financial support to this initiative."

41. During the general debate at the forty-ninth session of the General Assembly, the representatives of Angola, Brazil, Mozambique, Cape Verde, Ireland, Iceland, Portugal and Guinea-Bissau referred to the question of East Timor in their statement.

42. In the general debate in the Fourth Committee, several representatives made references to the question of East Timor under the agenda item entitled "Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples": Belarus (A/C.4/49/SR.6), Brazil (on behalf of the Rio Group) (A/C.4/49/SR.5) and Germany (on behalf of the European Union) (A/C.4/49/SR.5).

43. In the general debate in the Third Committee, references to East Timor were made by Germany (on behalf of the European Union), Canada, Norway and Sweden.

44. The Special Committee considered the question of East Timor at its 1431st, and 1435th to 1437th meetings, between 11 and 14 July 1994. During those meetings, the Committee heard statements by representatives of Indonesia (A/AC.109/PV.1431, 1435 and 1437); Sao Tome and Principe (on behalf also of Angola, Cape Verde, Guinea Bissau and Mozambique) (A/AC.109/PV.1436); Portugal, as the administering Power (A/AC.109/PV.1437); the Philippines (A/AC.109/PV.1437); Papua New Guinea (A/AC.109/PV.1437); and Fiji (A/AC.109/PV.1437); as well as by 28 petitioners.

45. At its 1437th meeting, on 14 July, the Special Committee decided to continue consideration of the item at its 1995 session subject to any directives which the General Assembly might give in that connection at its forty-ninth session (A/AC.109/PV.1437).

46. The question of East Timor was considered by the United Nations Subcommission for Prevention of Discrimination and Protection of Minorities at its 17th, 19th and 29th meetings, on 12, 15 and 29 August 1994 respectively (E/CN.4/Sub.2/1994/SR.17, 19 and 29). The documents pertaining to that consideration are listed below:

(a) Draft report of the Subcommission on Prevention of Discrimination and Protection of Minorities (E/CN.4/Sub.2/1994/L.10/Add.7 (Part II) of 22 September 1994), chapter VII;

(b) Situation in East Timor: draft resolution (E/CN.4/Sub.2/1994/L.20 of 18 August 1994);

(c) Situation in East Timor: note by the Secretariat (E/CN.4/Sub.2/1994/14 and Add.1 of 14 July and 5 August 1994).

47. The question of East Timor was subsequently discussed by the Commission on Human Rights during its fifty-first session at its 7th and 55th meetings, on 9 February and 15 March 1995, respectively (E/CN.4/1995/SR.7 and 55). The documents pertaining to that consideration are listed below:

(a) Draft report of the Commission on Human Rights, fifty-first session (E/CN.4/1995/L.10/Add.12);

(b) The right of peoples to self-determination and its application to peoples under colonial or alien domination or occupation. Question of the violations of human rights and fundamental freedoms in any part of the world with particular reference to colonial and other dependent countries and territories, written statement submitted by Amnesty International (E/CN.4/1995/NGO/21);

(c) Letter dated 17 October 1994 from the Permanent Representative of the Republic of Indonesia to the United Nations Office at Geneva addressed to the Assistant Secretary-General for Human Rights (E/CN.4/1995/107);

(d) Letter dated 2 November 1994 from the Permanent Representative of the Republic of Indonesia to the United Nations Office at Geneva addressed to the Assistant Secretary-General for Human Rights (E/CN.4/1995/108);

(e) Letter dated 29 November 1994 from the Permanent Representative of the Republic of Indonesia to the United Nations Office at Geneva addressed to the Assistant Secretary-General for Human Rights (E/CN.4/1995/117);

(f) Letter dated 1 January 1995 from the Permanent Representative of the Republic of Indonesia to the United Nations Office at Geneva addressed to the Assistant Secretary-General for Human Rights (E/CN.4/1995/118);

(g) Letter dated 3 March 1995 from the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations Office at Geneva addressed to the Assistant Secretary-General for Human Rights (E/CN.4/1995/173);

(h) Question of the violation of human rights and fundamental freedoms in any part of the world with particular reference to colonial and other dependent countries and territories: extrajudicial summary or arbitrary executions (E/CN.4/1995/61/Add.1);

(i) Situation in East Timor: report of the Secretary-General (E/CN.4/1995/72).

Notes

1/ Diario de Noticias (Lisbon), 25 and 27 July 1994; The Australian (Sydney), 26 July 1994; Publico (Lisbon) 23 July 1994; and The Straits Times (Singapore), 20 July 1994.

2/ Diario de Noticias (Lisbon), 31 July 1994.

3/ The Times (London), 3 August 1994.

4/ Jakarta Post, 26 August 1994.

5/ Reuters, 4 September 1994.

6/ Indonesian Observer (Jakarta), 12 September 1994.

7/ Reuters, 10 and 11 October 1994.

8/ Agence France-Presse, 28 October 1994.

9/ Reuters, 10, 11 and 14 November 1994.

10/ Reuters, 25 November 1994.

11/ The Guardian (London), 25 November 1994; and Agence France-Presse, 27 November 1994.

12/ The International Herald Tribune, 23 November 1994; and The New York Times, 22 November 1994.

13/ The Financial Times (London), 24 November 1994.

14/ Reuters, 28 November 1994.

15/ Indonesian Observer (Jakarta), 14 January 1995.

16/ The International Herald Tribune, 9 February 1995.

17/ The Australian (Sydney), 3 February 1995.

18/ The Australian (Sydney), 13 February 1995; Reuters, 17 February 1995; The Financial Review (Sydney), 13 February 1995; and The Sydney Morning Herald, 13 February 1995.

19/ Agence France-Presse, 24 February 1995.

20/ Reuters, 25 February 1995.

21/ The Financial Times (London), 27 February 1995.

22/ Jakarta Post, 5 April 1995.

23/ The Guardian (London), 3 January 1995; Reuters, 5 January 1995; and Jakarta News, 5 January 1995.

24/ Reuters, 10 and 14 February 1995.

25/ The International Herald Tribune, 16 February 1995.

26/ Reuters, 25 February 1995.

27/ Reuters, 6 March 1995.

28/ The Australian, 30 May 1995; Northern Territory News, 30 May 1995.

29/ United States Department of State, Country Reports on Human Rights Practice for 1994, Washington, D.C., February 1995, pp. 592-607.

30/ For details, see corresponding sections of the previous working papers prepared by the Secretariat contained in documents A/AC.109/L.1328, and A/AC.109/623, 663, 715, 747, 783, 836, 871, 919, 961, 1001, 1115, 1154 and 1187.

31/ See General Assembly resolutions 1699 (XVI), 1807 (XVII), 1913 (XVIII), 2107 (XX), 2184 (XXI), 2395 (XXIII), 2507 (XXIV), 2707 (XXV), 2795 (XXVI), 2918 (XXVII), 3113 (XXVIII), 3294 (XXIX), 3485 (XXX) and 31/53, relating to the question of Territories under Portuguese administration, including East Timor; see also Assembly resolutions 32/34, 33/39, 34/40, 35/27, 36/50 and 37/30 on the question of East Timor.

32/ General Assembly decisions 38/402, 39/402, 40/402, 43/402 and 46/402; see also A/41/PV.3, A/44/PV.3, A/45/PV.3, A/47/PV.3, A/48/130 and A/49/402.

33/ See A/35/233, A/37/160, A/37/125, A/39/136, A/40/159, A/41/190, A/42/171, A/43/219, A/44/262, A/45/172, A/46/131, A/47/189, A/48/130 and A/49/184. Owing to a lack of information from the administering Power, the information contained in the present paper has been derived from other sources.

34/ A/38/352, A/39/361, A/40/622, A/41/602, A/42/539, A/43/588, A/44/529, A/45/507, A/46/456 and A/48/418.

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WITH REGARD TO THE IMPLEMENTATION
OF THE DECLARATION ON THE GRANTING
OF INDEPENDENCE TO COLONIAL
COUNTRIES AND PEOPLES

FALKLAND ISLANDS (MALVINAS)

Working paper prepared by the Secretariat

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FALKLAND ISLANDS (MALVINAS) 1/

I. GENERAL

1. The Falkland Islands (Malvinas), which is administered by the United Kingdom of Great Britain and Northern Ireland, comprises two large islands known as East and West Falkland, as well as some 200 smaller islands, and has a total area of about 12,173 square kilometres. The Territory is situated in the South Atlantic, about 770 kilometres north-east of Cape Horn and about 480 kilometres east of the South American mainland. South Georgia, located about 1,300 kilometres south-east of the Falkland Islands (Malvinas) group, and the South Sandwich Islands, about 750 kilometres east-south-east of South Georgia, are administered from the Falkland Islands (Malvinas) as a separate Territory; the Governor of the Falkland Islands (Malvinas) acts as Commissioner for South Georgia and the South Sandwich Islands.

2. According to the 1991 census, the population of the Territory was 2,121, excluding military personnel and contract workers, but including some expatriate staff in permanent posts. Of the total, 1,643 lived in Stanley, the capital, and its environs and the remainder on farms and in small settlements varying in size from around 30 people to several farms run by only one family. Most settlement communities have fewer than 10 people. In 1980, according to the census of that year, of the 1,813 permanent inhabitants, 1,360 were born in the Territory and about 300 in the United Kingdom.

II. CONSTITUTION AND GOVERNMENT

3. The Constitution of the Falkland Islands (Malvinas), which came into effect on 18 April 1985, vests executive power in a Governor, who is the personal representative of the British monarch, assisted by an Executive Council consisting of the Chief Executive and the Financial Secretary and three members of the Legislative Council chosen by the eight elected members from among themselves. The Chief Executive and Financial Secretary are ex officio members of both councils and have no vote. One of the principal features of the Constitution is the reference in the preamble to the islanders' right to self-determination in conformity with the provisions of the Charter of the United Nations. (For further details, see the 1985 working paper prepared by the Secretariat (A/AC.109/835 and Corr.1, paras. 4-39).)

4. The Territory is divided into two constituencies for electoral purposes: the Stanley Constituency, which comprises the capital and its environs, and the Camp Constituency, made up of the rest of the Territory. There are four elected members for each constituency. All Commonwealth citizens 18 years or older who satisfy the residency requirements are allowed to vote. Elections must be held at intervals not longer than just over four years. The last general election was held in October 1993.

III. POLITICAL DEVELOPMENTS

5. In a letter dated 23 August 1994 and addressed to the Secretary-General, the Permanent Representative of Argentina to the United Nations transmitted the text of a protest note dated 22 August 1994 from the Government of the Argentine Republic to the Government of the United Kingdom of Great Britain and Northern Ireland regarding "the unilateral measure" taken by the United Kingdom of Great Britain and Northern Ireland "extending its alleged maritime jurisdiction" in the waters adjacent to the Falkland Islands (Malvinas). The Permanent Representative of Argentina requested that the note and its annex be circulated as a document of the General Assembly under item 45 of the provisional agenda of the forty-ninth session entitled "Question of the Falkland Islands (Malvinas)", and of the Security Council, and drawn to the attention of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples (A/49/334-S/1994/988).

6. The text of the note was as follows:

> "The Ministry of Foreign Affairs, International Trade and Worship presents its compliments to the Embassy of the United Kingdom of Great Britain and Northern Ireland and refers to the unilateral British decision to extend its alleged jurisdiction over the maritime space west of and adjacent to the area described in the annex to the Joint Statement of 28 November 1990.
>
> "The Argentine Government registers its most serious protest and rejection of that measure which involves maritime spaces adjacent to Argentine national territory, and does not accept the attempt to extend the dispute over sovereignty to an undisputed area.
>
> "In the maritime space in which the United Kingdom seeks to extend its alleged jurisdiction, the Argentine Republic has exercised, exercises and will continue to exercise sovereign rights, particularly in respect of the administration and control of fisheries.
>
> "The British action implies a departure from the Joint Statement and the bilateral understandings reached from 1990 until now regarding the South-West Atlantic.
>
> "Furthermore, the action of the United Kingdom disregards the General Assembly resolutions which call on the parties to the dispute to find a solution to the controversy regarding sovereignty over the Malvinas, South Georgia and South Sandwich islands by means of negotiations and which call upon the two parties 'to refrain from taking decisions that would imply introducing unilateral modifications in the situation' (General Assembly resolution 31/49 of 1976).
>
> "The Argentine Government reserves the right to raise the question of the serious situation deriving from the measure adopted by the British Government in the competent international forums, particularly the General Assembly of the United Nations.

"Without prejudice thereto, and in exercise of its jurisdiction over the said area, the Argentine Government will continue to administer and exploit the living marine resources in that zone, and to monitor and control the activities carried out therein, for the better conservation of the resources.

"Furthermore, the Argentine Government considers that unilateral decisions of this nature interfere with the maintenance and possible deepening of the bilateral understandings on fisheries, with negative consequences for the conservation of the living marine resources in the South-West Atlantic.

"Consequently, the Argentine Government urges the British Government to refrain from putting the measure into effect and from any unilateral act in the area in question so as to permit the continuation of the fruitful cooperation achieved thus far."

7. In a letter dated 26 August 1994 and addressed to the Secretary-General, the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations transmitted the text of the note of the same date from his Government in response to the note from the Government of the Argentine Republic. The Permanent Representative of the United Kingdom of Great Britain and Northern Ireland requested that the letter and its annex be circulated as a document of the General Assembly, under item 45 of the provisional agenda, and of the Security Council (A/49/341-S/1994/1005).

8. The text of the note was as follows:

"The British Embassy presents its compliments to the Ministry of Foreign Affairs, International Trade and Worship, and with reference to the latter's note of 22 August 1994 (A/49/334, annex) has the honour, on instructions, to state the following in response.

"The United Kingdom has no doubts about its sovereignty over the Falkland Islands and its consequential right to extend maritime jurisdiction around the Territory in accordance with the rules of international law. Accordingly, the Embassy is instructed to reject the protest contained in the Ministry's note.

"The Embassy does not accept the statement in the Ministry's note that 'the Argentine Republic has exercised, exercises and will continue to exercise sovereign rights, particularly in the matter of administration and control of fishing activities' in the area lying to the west of and adjacent to the area described in the annex to the Joint Statement of 28 November 1990. The United Kingdom does not recognize Argentine jurisdiction over the area, which lies within 200 miles of the Falkland Islands and more than 200 miles from Argentine baselines.

"In regard to the reference in the Ministry's note to resolutions of the General Assembly of the United Nations about the Falkland Islands, the position of the British Government on these resolutions is well known and remains unchanged.

"The United Kingdom has taken action to include certain waters which are within 200 miles of Falkland Islands baselines into the Falkland Islands outer conservation zone to prevent the continuation of uncontrolled fishing taking place in that area to the prejudice of the stocks of fish and, in particular, of illex squid. Argentina's well-known concerns about uncontrolled fishing in the South-West Atlantic are shared by the United Kingdom.

"The United Kingdom remains interested in cooperating with Argentina on measures to ensure the effective conservation of the living marine resources in the South-West Atlantic."

9. In August 1994, the National Congress of Argentina revised the text of the country's Constitution and included, inter alia, a transitory provision which reaffirmed Argentina's rights to the Falkland Islands (Malvinas) and stated that, in recovering those rights, respect for international law and the way of life of the population of the Islands should be paramount. 2/

10. In response to the above action, the Embassy of the United Kingdom of Great Britain and Northern Ireland in Buenos Aires presented a note dated 30 August 1994 to the Ministry of Foreign Affairs, International Trade and Worship of Argentina. The text of the note was as follows:

"Her Britannic Majesty's Embassy presents its compliments to the Ministry of Foreign Affairs, International Trade and Worship - Malvinas and South Atlantic Division - and has the honour to inform the Ministry that the Government of the United Kingdom of Great Britain and Northern Ireland have become aware of the decision of the Argentine Constituent Assembly to approve a revised Constitution which includes a clause purporting to claim sovereignty over the Falkland Islands, South Georgia and the South Sandwich Islands and their surrounding maritime areas.

"The United Kingdom has no doubt about its sovereignty over, and maritime jurisdiction and rights in respect of, the Falkland Islands, South Georgia and the South Sandwich Islands. Consequently, the Embassy are instructed to reject the Argentine claim in the revised Constitution to sovereignty over these territories and wish to protest formally at the renewed assertion of this claim.

"As regards the reference in the revised Constitution to the inhabitants of the Falkland Islands, the Government of the United Kingdom recall the manifested strongly held wish of the Falkland Islanders to remain British." 3/

11. A poll conducted in November 1994 on the islands by the internationally recognized public opinion organization MORI and paid for by Argentine businessmen has shown that the overwhelming majority of islanders were opposed to any negotiation with Argentina over sovereignty and to any idea of accepting payment in return for a transfer of sovereignty to Argentina. 4/

12. In his Christmas message to the people of the Falkland Islands (Malvinas), the Prime Minister of the United Kingdom of Great Britain and Northern Ireland,

inter alia, confirmed that the policy of his Government in defending the rights of the islanders was both "just and essential" and that the Government would "not be diverted from that course"; that the islanders had "the right to be governed under the flag of their own choice" and the Government would "continue to uphold that right"; that the recent opinion poll conducted in the islands "made clear the very strong feelings" that the islanders had on this subject and that the Government's feelings were "no less firm". 5/

13. In his article on the Falkland Islands (Malvinas) published in December 1994, the Secretary of State for Foreign and Commonwealth Affairs, Mr. Douglas Hurd, concluded that the question of sovereignty of the Falkland Islands was in effect settled. In his view, the islanders would not accept Argentine rule, and no one would in practice force it on them. As regards the contacts between the islanders and Argentina, Mr. Hurd believed that was a matter that the islanders would have to work out for themselves and that the British Government would not lean on them to enter into contacts that they suspected or disliked. In conclusion, Mr. Hurd wrote that, because of what had happened in 1982, the British commitment to the Falkland Islands had from time to time to be restated. 6/

14. On 3 January 1995, the Government of Argentina issued the following statement: 7/

> "Today being the one hundred sixty-second anniversary of the illegitimate British occupation of the Malvinas Islands, the Argentine people and Government once again reaffirm Argentina's sovereign rights over the Malvinas Islands, the South Georgia Islands, the South Sandwich Islands and the surrounding seas.
>
> "The Argentine Government reiterates that it remains determined to resume exercising its sovereign rights through negotiations leading to a just and final solution of this territorial dispute and stresses that it proposes to continue moving ahead in the dialogue with the United Kingdom in order to build strong relationship of mutual trust and cooperation in the South-West Atlantic.
>
> "At the same time, the Argentine Government reiterates its willingness to engage in dialogue and cooperation with the inhabitants of the Malvinas Islands and to safeguard their interests and well-being. This position is upheld by the new Constitutional text which, in its first transitory provision, establishes recovery of these territories and full exercise of sovereignty, while respecting the inhabitants' way of life and in accordance with the principles of international law, as a permanent and absolute objective of the Argentine people."

15. On 22 March 1995, during the debate on the Falkland Islands in the House of Commons, the Minister of State, Foreign and Commonwealth Office, summarized his Government's policy towards the Falkland Islands as follows: once the Argentines accepted that the islanders were British and had their own right to self-determination, relations [with Argentina] could be built on a normal basis; the islanders were not a transitory population, they had been there without interruption since 1833 and had chosen throughout all that time to remain under

the British flag; assertions that the Falklands would become Argentine were highly objectionable to his Government and the islanders and they rejected them and would continue to do so at every opportunity; his Government cooperated with Argentina in many areas and agreements had been signed on visa abolition, cultural cooperation, investment protection and promotion, antinarcotics and air services; his Government had no doubt about the sovereignty of the Falklands and the right of self-determination involved respecting the wishes of the people of the Falklands; his Government was committed to the defence of the islands, and, finally, his Government was actively helping the islanders to benefit from prospective oil and gas resources. 8/

IV. MINE CLEARING

16. As noted in the previous working paper prepared by the Secretariat (A/AC.109/1198, para. 35), the Argentine Government offered the United Kingdom to clear the mines laid in the Falkland Islands (Malvinas) during the conflict of 1982. In July 1994, the Argentine Government and the Government of the United Kingdom of Great Britain and Northern Ireland presented notes to the Government of the United States of America, requesting its cooperation to carry forward the bidding process on the projects of mine clearing and to take necessary steps in order to guarantee the effective removal of mines. The Government of the United States responded positively to this request in August of that year by specifying modalities of the bidding process. As of the time of preparation of the present paper, a regular exchange between the Argentine Government and that of the United States has been taking place in order to arrange the details of the operation and its financing.

V. ECONOMIC CONDITIONS

A. General

17. Detailed information on developments in the economy of the Falkland Islands (Malvinas) is provided in the previous working paper prepared by the Secretariat (A/AC.109/1198, paras. 38-42).

B. Agriculture, land tenure and livestock

18. Detailed information on developments in the field of agriculture, land tenure and livestock is provided in the previous working paper (A/AC.109/1198, paras. 43-46).

C. Fisheries

19. Detailed information under this section is provided in the previous working paper (A/AC.109/1198, paras. 47-55).

20. The tenth meeting of the South Atlantic Fisheries Commission took place in London on 5 and 6 June 1995. The text of the joint communiqué is reproduced below:

"1. The Tenth Meeting of the South Atlantic Fisheries Commission took place in London on 5 and 6 June 1995. The British delegation was led by the head of the South Atlantic and Antarctic Department, Mr. Tony Longrigg, and the Argentine delegation by the head of the Malvinas and South Atlantic Department, Minister Luis Mendiola.

"2. The British and Argentine delegations agreed that there applied to this meeting and its consequences the formula on sovereignty over the Falkland Islands, South Georgia and the South Sandwich Islands and the surrounding maritime areas agreed by the British and Argentine Governments in paragraph 2 of the Joint Statement issued in Madrid on 19 October 1989.

"3. The South Atlantic Fisheries Commission welcomed the report of the Scientific Subcommittee on its fifth meeting which was held in London on 1 and 2 June 1995.

"4. The delegations agreed that they attached fundamental importance and the greatest priority to conserving the various species in the fisheries, most notably illex and blue whiting, on the basis of the best available scientific advice. They welcomed the cooperation between INIDEP and Imperial College and encouraged the scientists to maintain and develop their consultations further. They recommended to their Governments that the early warning system should be improved so that the scientists could provide a joint assessment without delay. They agreed that INIDEP and Imperial College should discuss this with a view to making recommendations on this issue to the next meeting of the South Atlantic Fisheries Commission.

"5. The delegations welcomed the positive experience of the joint research cruises carried out in 1993, 1994 and 1995. They confirmed that preparations would be made for a joint blue whiting cruise in the second half of 1995 and for a joint illex pre-recruit survey in February 1996. The Commission noted the recommendation of the Scientific Subcommittee that additional research on blue whiting was urgently needed, and agreed that the planning of the blue whiting cruise would be the subject of early consultation between INIDEP and Imperial College.

"6. Both delegations welcomed the procedures under the rapid communications system, which they agreed was working well.

"7. The Commission noted with concern illegal activities of fishing vessels in the South-West Atlantic and agreed to continue cooperation, including an intensified exchange of information, to curtail such activities.

"8. The delegations discussed the conservation of migratory and straddling stocks and species related to them in international waters - in accordance with paragraph 4 (d) of the Joint Statement of

28 November 1990 - and the work of the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks. They agreed to discuss the issue further at the next meeting of the South Atlantic Fisheries Commission.

"9. The Commission noted that 'the Subcommittee encouraged scientists from the delegations to submit joint publications to international scientific journals based on some of the joint scientific work carried out'. The two delegations agreed that the formula on sovereignty referred to in paragraph 2 above would apply to all such joint publications.

"10. The Commission agreed to meet again in Buenos Aires in November 1995.

"11. The meeting took place in a warm and friendly atmosphere." 9/

21. The Territory's fishing sector is based on the sale of licences to vessels fishing for squid and other species in the Falkland Islands conservation zones. A zone, with a radius of 150 miles, was established by the administering Power with effect from 1 February 1987 and involves a licensing regime under which the number of fishing vessels and therefore the total catch is limited. On 26 December 1990 a further Falklands Outer Conservation Zone, extending to 200 miles, was established. In August 1994, the administering Power extended the Outer Conservation Zone to its full 200-mile limit, to the west of and adjacent to the area described in the annex to the joint statement of 28 November 1990. Argentina protested this action (see paras. 5 and 6 above), and the United Kingdom rejected that protest (see paras. 7 and 8 above).

22. In November 1994, a total of 220 applications for 1995 season fishing licences were received by the Fisheries Department of the Falkland Islands (Malvinas). Of that number 49 were applications for long-term licences. These applications were assessed against the points system, which is part of the policy adopted recently by the Fisheries Department. The objective of the policy is to give emphasis to the participation by the Territory's residents in fishing activities within the Falklands conservation zones and the creation of a fishing industry within the islands' private sector. 10/

23. Among the countries licensed to fish in the islands' waters during 1995 are Belize, Chile, France, Honduras, Italy, Japan, the Republic of Korea, Panama, Poland, Portugal and Spain.

24. In order to preserve the illex squid stocks to the south of the 45th parallel, the United Kingdom decided to close the illex fishing season as early as 20 May 1995; Argentina did so as early as 4 June 1995. Both countries employed again the mechanism of "early warning" agreed upon at the seventh meeting of the South Atlantic Fisheries Commission.

D. Industry and tourism

25. Detailed information on industrial developments and tourism sector is provided in the previous working paper (A/AC.109/1198, paras. 56-59).

E. Oil

26. Detailed information on developments in the field of oil exploration is provided in the previous working paper (A/AC.109/1198, paras. 60-64).

27. In early October 1994, the British press reported that British Gas and the recently privatized Argentine petroleum company YPF had expressed interest in forming a joint venture to search for oil in the islands' waters. According to the information provided to the Secretariat by the Permanent Mission of Argentina to the United Nations, the Argentine Government warned the oil companies interested in the area through "letters of discomfort", about the administrative and legal consequences of their activities in the disputed areas, should they not have the proper authorization of the Argentine Government.

28. In response to above press reports, on 15 October 1994, the Falkland Islands (Malvinas) Government published the following press release: 11/

> "The Falkland Islands Government welcomes the reported interest of British Gas/YPF in the development of any oil reserves which may be discovered around the Falkland Islands. So far the Falkland Islands Government has received no approach from the proposed consortium."

29. By publishing on 22 October 1994 a special supplement to Penguin News entitled "Oil and the Falklands" the territorial Government launched a programme of public relations and dissemination of information on oil matters directed to the islands' inhabitants before enacting the Offshore Minerals Bill (1994). The bill was scheduled for discussion by the Legislative Council in late October 1994.

30. On 27 October 1994, the Legislative Council passed the bill, which provided the basic legal framework for the exploration for oil around the Falkland Islands (Malvinas) and for exploiting oil if the search was successful. In its essentials, the bill allows the Government to grant licences to explore and exploit offshore and gives the Government powers over the operation; provides for health and safety regulations in the offshore industry; deals with underwater pipelines and procedures for the decommission of equipment; and provides for environmental impact control by the Government. 12/

31. In early February 1995, representatives of the United Kingdom and Argentina held a two-day meeting in Buenos Aires to study the possibility of cooperating in oil exploitation in the South Atlantic. The delegations released a declaration at the end of the meeting stressing the "reasonably positive" nature of the dialogue. 13/

F. Energy, transport and communications

32. Detailed information under this section is provided in the previous working paper (A/AC.109/1198, paras. 65-70).

33. According to the information provided to the Secretariat by the Permanent Mission of Argentina to the United Nations, its Government considers that the

re-establishment of communications between the mainland and the Falkland Islands (Malvinas) would contribute to a better understanding among the inhabitants of the whole region, as well as in a very meaningful way, to the development of the trade and the economy. It is also trying, in the interests of the islanders, to facilitate as much as possible the establishment of sea and air links between the Islands and the Argentine mainland or neighbouring countries.

G. Banking

34. The Standard Chartered Bank of the United Kingdom opened a branch at Stanley in 1983. Both United Kingdom and local coinage are used, together with local currency notes of £20, £10 and £5 values.

35. According to the local press reports, two banks in the United Kingdom expressed interest in operating in the Territory. 14/

H. Public finance and international trade

36. Detailed information under this section is provided in the previous working paper (A/AC.109/1198, paras. 72-77).

37. According to the information provided to the Secretariat by the Permanent Mission of Argentina to the United Nations, its Government favours the re-establishment and normalization of trade between the Falkland Islands (Malvinas) and the Argentine mainland.

VI. SOCIAL AND EDUCATIONAL CONDITIONS

38. Detailed information under this section is provided in the previous working paper (A/AC.109/1198, paras. 78-97).

VII. PARTICIPATION IN INTERNATIONAL ORGANIZATIONS AND ARRANGEMENTS

39. The Government of the Falkland Islands (Malvinas) participates in activities of the Commonwealth. It also takes part in the work of multilateral organizations concerned with exploitation and preservation of marine resources in the South Atlantic.

40. In January 1995, for the first time in its history, the Government of the Falkland Islands (Malvinas) hosted a Commonwealth Parliamentary Association Seminar which was attended by representatives of the United Kingdom and its dependent territories as well as nations of the Mediterranean region. Among the participants were representatives of the Falkland Islands (Malvinas), Malta, the Isle of Man, Guernsey, Gibraltar, Jersey and St. Helena. 15/

VIII. CONSIDERATION BY OTHER INTERGOVERNMENTAL ORGANIZATIONS

Organization of American States

41. At its twenty-fifth regular session, held at Montrouis, Haiti, from 6 to 9 June 1995, the General Assembly of the Organization of American States, taking into account the fact that, on numerous occasions, it had declared that the question of the Malvinas Islands constituted a question of permanent hemispheric interest and recalling its resolution AG/Res.928 (XVIII-O/88), adopted by consensus, requesting Argentina and the United Kingdom to resume negotiations in order to find, as soon as possible, a peaceful solution to the sovereignty dispute, expressed its satisfaction at the reaffirmation by the Government of Argentina of its willingness to continue to explore all possible avenues for a peaceful solution of the controversy, particularly its positive consideration regarding the inhabitants of the Malvinas Islands. The Assembly decided to continue to examine the question at its future sessions until it was definitively solved.

IX. FUTURE STATUS OF THE TERRITORY

A. Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

42. The Special Committee considered the question of the Falkland Islands (Malvinas) at its 1431st and 1433rd meetings on 11 and 12 July 1994, when it had before it a working paper on developments concerning the Territory prepared by the Secretariat (A/AC.109/1198).

43. The Special Committee granted requests for hearing petitioners and, at its 1433rd meeting, heard statements by four petitioners (A/AC.109/PV.1433).

44. The representative of Venezuela introduced, on behalf also of Chile and Cuba, draft resolution A/AC.109/L.1819.

45. Following statements by the representatives of Tunisia and Papua New Guinea, the Committee adopted draft resolution A/AC.109/L.1819 without a vote. Statements in explanation of position were made by the representatives of Fiji and Sierra Leone (A/AC.109/PV.1433). The representative of Cuba made a statement (A/AC.109/PV.1433).

46. At the same meeting, the Minister for Foreign Affairs of Argentina made a statement (A/AC.109/PV.1433), in which he said that the Malvinas Islands constituted part of the territory of Argentina, and their recovery was a constant and unforsakable cause for the entire Argentine people and that his Government would continue to carry out diplomatic efforts in all forums until such time as the restitution of those territories had been achieved (for the full text of the statement see A/AC.109/PV.1433).

47. On 21 July 1994, the text of the resolution (A/AC.109/2003) was transmitted to the Permanent Representatives of the United Kingdom of Great Britain and

Northern Ireland and of Argentina to the United Nations for the attention of their respective Governments.

B. General Assembly

Position of the Government of Argentina

48. During the general debate of the forty-ninth session of the General Assembly, the President of the Argentine Republic, in the course of his statement on 27 September 1994 (A/49/PV.6), reaffirmed the position of his Government that Argentina had well-founded and unequivocal sovereign rights over the Malvinas and over South Georgia and the South Sandwich Islands. He emphasized that in 1994 that claim took on special meaning, since the Argentine people, through their representatives in the National Congress, had reformed the supreme law of the country, giving constitutional status to the question of the islands by including, in the new text of the Constitution, a transitory provision that reaffirmed their rights and stated that, in recovering those rights, respect for international law and the way of life of the population of the islands should be paramount.

Position of the United Kingdom of Great Britain and Northern Ireland

49. Speaking during the general debate at the forty-ninth session of the General Assembly (A/49/PV.8) and in response to the remarks of the President of Argentina, the Secretary of State for Foreign and Commonwealth Affairs of the United Kingdom of Great Britain and Northern Ireland reiterated that his Government was quite clear about British sovereignty over the Falkland Islands and the other British dependencies in the South Atlantic and so it was concerned at the recent incorporation into the Constitution of Argentina of the new clause to which the President of the Argentine Republic had referred. Noting the difference with Argentina over that issue, he stated at the same time that his Government had joined a dialogue with the Argentine Government on fisheries and petroleum development and looked forward to resuming discussions in the near future with the Argentine authorities on a new agreement on fishing and on the development of possible hydrocarbon resources in the South Atlantic continental shelf.

Contributions by other member States

50. During the debate in the Special Political and Decolonization Committee (Fourth Committee) of the General Assembly, the representative of Brazil made a statement on behalf of the Rio Group (A/C.4/49/SR.5), in which he said, inter alia, that, in the Latin American region, the members of the Rio Group were confident that the improved relations between Argentina and the United Kingdom would permit a peaceful solution to the long-standing dispute over the Malvinas, South Georgia and the South Sandwich Islands. Speaking in exercise of the right of reply (A/C.4/49/SR.5), the representative of the United Kingdom and Northern Ireland said that the representative of Brazil, speaking on behalf of the Rio Group earlier in the meeting, had expressed the wish for a solution to be found to the sovereignty dispute over the Falklands, South Georgia and the South Sandwich Islands. The position of the United Kingdom Government on those

matters was well known. It had been most recently set out by the Foreign Secretary in his speech to the General Assembly on 28 September 1994 (A/49/PV.8).

51. On 3 November 1994, at its 50th meeting, the General Assembly, taking into account its decision 48/408 of 16 November 1993, decided to defer consideration of the question of the Falkland Islands (Malvinas) and to include it in the provisional agenda of its fiftieth session (A/49/PV.50).

Notes

1/ The information contained in the present paper is based on official documents of the Governments of Argentina and the United Kingdom of Great Britain and Northern Ireland, information provided by the Permanent Missions of the two States to the United Nations and published reports.

2/ See A/49/PV.6.

3/ Text of the note by the British Embassy in Buenos Aires (photocopy), 30 August 1994.

4/ Penguin News (Stanley), 17 and 24 December 1994.

5/ Text of the Falklands Christmas Message (photocopy), 30 December 1994.

6/ Falkland Islands Newsletter (London), December 1994, pp. 2-3.

7/ Text of press communiqué (photocopy), 3 January 1995.

8/ United Kingdom, House of Commons, Official Report, Parliamentary Debates (Hansard), 22 March 1995, pp. 280-284.

9/ Tenth meeting of the South Atlantic Fisheries Commission: London, 5-6 June 1995 (photocopy).

10/ Penguin News, 19 November 1994.

11/ Penguin News, 15 October 1994.

12/ Penguin News, 22 and 29 October 1994.

13/ Foreign Broadcast Information Service, FBIS-LAT-95-024, 6 February 1995.

14/ Penguin News, 18 February 1995.

15/ Penguin News, 21 January 1995.

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OF THE DECLARATION ON THE GRANTING
OF INDEPENDENCE TO COLONIAL
COUNTRIES AND PEOPLES

FALKLAND ISLANDS (MALVINAS)

Working paper prepared by the Secretariat

Corrigendum

Paragraph 50, sixth line

For long-standing dispute read long-standing sovereignty dispute

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WITH REGARD TO THE IMPLEMENTATION
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COUNTRIES AND PEOPLES

NEW CALEDONIA

Working paper prepared by the Secretariat

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I. INTRODUCTION

1. The present working paper is an update of the previous working paper on New Caledonia prepared by the Secretariat in 1994 (A/AC.109/1197).

II. GENERAL

2. New Caledonia is located in the Pacific Ocean, about 1,500 kilometres east of Australia and 1,700 kilometres north of New Zealand. It comprises one large island, known as Grande Terre, and smaller islands known as the Loyalty Islands (Ouvéa, Maré, Lifou and Tiga), the Bélep Archipelago, the Isle of Pines and Huon Island. There are also several uninhabited islands to the north of the Loyalty Islands. The area of Grande Terre is 16,750 square kilometres and that of the whole Territory, 19,103 square kilometres. Nouméa, the capital, is located in the south of Grande Terre.

3. According to the 1989 census, the population was 164,173, comprising 73,598 indigenous Melanesians known as Kanaks (44.8 per cent); 55,085 persons of European origin, mainly French (33.6 per cent), of whom 35,000 persons, known as Caldoches, are descendants of the early settlers; 18,936 Wallisians and Tahitians (11.5 per cent); and 16,554 others, mainly Indonesians and Vietnamese (10.1 per cent). It is estimated that in 1991 the population was 170,000 persons.

4. There are two principal political groupings and numerous small parties. The two main groupings are the Rassemblement pour la Calédonie dans la République (RPCR), which supports the principle of maintaining New Caledonia in the French Republic, and the Front de libération nationale kanake socialiste (FLNKS), which favours independence. The constituents of FLNKS include the Union calédonienne (UC), the Parti de libération kanak (PALIKA), the Union progressiste mélanésienne and the Parti socialiste calédonien (PSC). 1/

5. The Matignon Accords of 1988 (see A/AC.109/1000, paras. 9-14) provide for a 10-year period of economic and social development and a self-determination referendum to be held in 1998. During the period of development, efforts are being concentrated on effecting a more equitable economic distribution among the three provinces and providing education and training that would enable Kanaks to participate equally in the economy and Government of the Territory.

III. POLITICAL DEVELOPMENTS

6. The fourteenth Congress of the FLNKS concluded its work on 3 December 1994 2/ at Paya, on the west coast. The leadership of the FLNKS reaffirmed its willingness to pursue discussions with the other parties to the Accords. Mr. Paul Neaoutyine, who was re-elected president of the Front, stated then that the dialogue must concentrate on the political arrangements prevailing during the remaining period (1995-1998) as well as on the future of the Territory beyond 1998. A major item of discussion is expected to revolve around the institutional arrangements that would be put in place following the full

implementation of the Matignon Accords (for detailed information regarding the Matignon Accords, see annexes I to VII).

7. The FLNKS declared its support for the opinion of the UC, the majority party within the FLNKS coalition, that it was imperative to avoid making the planned referendum a divisive issue in New Caledonia between the proponents of independence and the supporters of the status quo. The prevalent sentiment was that all parties should agree upon a compromise formula regarding the future status of the Territory prior to the referendum, which in effect ratified it ad posteriori.

8. Mr. Paul Neaoutyine stated at the time that the ongoing discussions with all the other parties could determine a way to evolve towards independence that would take into consideration a certain degree of disagreement with regard to the competence directly related to the question of sovereignty. This line of thinking, which prevailed during the fourteenth Congress of the FLNKS, was an indication that the leadership of the Front was in favour of closing ranks and reinforcing its own coalition, to which it would like to invite other nationalists and progressive groups, such as political, social and organized labour organizations.

9. It was reported that the FLNKS had for the first time boycotted the meetings of the Committee to Monitor the Matignon Accords, held on 7 to 8 February 1995 at Nouméa. 3/ FLNKS declared that since 1993 the RPCR had not been interested in discussing the genuine implementation of the Accords and that the Government of France had not shown any eagerness to implement them.

IV. ECONOMIC DEVELOPMENTS

A. Mining industry

10. According to the latest estimates, New Caledonia has up to 40 per cent of the world's known nickel resources. Estimated production capacity of the nickel ore deposit of the Société Le Nickel, a subsidiary of the French conglomerate ERAMET, is put at 830,000 tons per year over another 15 years. SLn exports matte and ferro nickels and currently supplies 65 per cent of Australia's consumption of lateritic ore (1.5 per cent nickel content) and 52 per cent of Japan's consumption of garnieritic ore (2.2 to 3 per cent nickel content). 4/

B. Communications

11. Air transportation continued to be of significant importance for the Territory, which is currently being serviced by the following airlines: Air France; ACI; AOM; Corsair; Qantas; Air New Zealand; and Air Vanuatu. The number of air passenger arrivals to New Caledonia in 1994 was 298,173 compared with 287,974 passengers in 1990. 4/

V. ACTION OF THE GENERAL ASSEMBLY

12. On 9 December 1994, the General Assembly adopted without a vote resolution 49/45, entitled "Question of New Caledonia". The text of the resolution is as follows:

"The General Assembly,

"Having considered the question of New Caledonia,

"Having examined the chapter of the report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples relating to New Caledonia, 1/

"Reaffirming the right of peoples to self-determination as enshrined in the Charter of the United Nations,

"Recalling its resolution 1514 (XV) of 14 December 1960 and 1541 (XV) of 15 December 1960,

"Noting the importance of the positive measures being pursued in New Caledonia by the French authorities, in cooperation with all sectors of the population, to promote political, economic and social development in the Territory, including measures in the area of environmental protection and action with respect to drug abuse and trafficking, in order to provide a framework for its peaceful progress to self-determination,

"Noting also, in this context, the importance of equitable economic and social development, as well as continued dialogue among the parties involved in New Caledonia in the preparation of the act of self-determination of New Caledonia,

"Welcoming the strengthening of the Matignon Accords review process through the increased frequency of coordination meetings,

"Noting with satisfaction the intensification of contacts between New Caledonia and neighbouring countries of the South Pacific region,

"1. Urges all the parties involved, in the interest of all the people of New Caledonia and building on the positive outcome of the mid-term review of the Matignon Accords, to maintain their dialogue in a spirit of harmony;

"2. Invites all the parties involved to continue promoting a framework for the peaceful progress of the Territory towards an act of self-determination in which all options are open and which would safeguard

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"1/ Official Records of the General Assembly, Forty-ninth Session, Supplement No. 23 (A/49/23), Part V, chap. VIII.

the rights of all New Caledonians according to the letter and the spirit of the Matignon Accords, which are based on the principle that it is for the populations of New Caledonia to choose how to control their destiny;

"3. Welcomes measures which have been taken to strengthen and diversify the New Caledonian economy in all fields, including the commissioning of the new nickel mine by the Société métallurgique Le Nickel at Kopeto and the establishment of new aquaculture projects, and encourages further such measures in accordance with the spirit of the Matignon Accords;

"4. Also welcomes the importance attached by the parties to the Matignon Accords to greater progress in housing, employment, training, education and health care in New Caledonia;

"5. Acknowledges the contribution of the Melanesian cultural centre to the protection of the indigenous culture of New Caledonia;

"6. Notes the positive initiatives aimed at protecting New Caledonia's natural environment, notably the "Zonéco" operation designed to map and evaluate marine resources within the economic zone of New Caledonia;

"7. Acknowledges the close links between New Caledonia and the peoples of the South Pacific and the positive actions being taken by the French and provincial authorities to facilitate the further development of those links, including the development of closer relations with the member countries of the South Pacific Forum;

"8. Welcomes in particular, in this regard, continuing high-level visits to New Caledonia by delegations from countries of the Pacific region and high-level visits by delegations from New Caledonia to member countries of the South Pacific Forum;

"9. Requests the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples to continue the examination of this question at its next session and to report thereon to the General Assembly at its fiftieth session."

Notes

1/ The Europa World Year Book 1992, vol. I, p. 1148.

2/ Le Monde, 6 December 1994.

3/ Ibid., 10 February 1995.

4/ Island Business, May 1995.

ANNEX I

New Caledonia in May 1995 and the monitoring of the Matignon Accords

Since 1988 New Caledonia has developed within the framework of the Matignon Accords and the Referendum Act of 9 November 1988 which embodied statutory arrangements preparatory to the exercise of self-determination in New Caledonia in 1998.

On his first official visit to New Caledonia in June 1993, the Minister for Overseas Departments and Territories stated that it was the Government's intention to carry out its mission of arbitration, keep the civil peace, promote dialogue and continue the realignment of the provinces created by the Referendum Act, in keeping with the Matignon Accords and to work in close collaboration with the signatories to the Accords, in a spirit of mutual respect for the convictions and responsibilities of each party.

At the 5th meeting of the Committee to Monitor the Matignon Accords, which met in Paris from 6 to 9 December 1993, this position was reaffirmed by the Prime Minister, who received the delegations. It was decided that intermediate decentralized meetings would be held in order to ensure that the dialogue became more regular and that the decisions of the annual meetings of the monitoring committee would be acted on. Two intermediate meetings of the monitoring committee would be acted on. Two intermediate meetings of the monitoring committee were held: one in February 1994 in Koné, capital of North Province; the other in September 1994 in Nouméa, capital of the Territory and of South Province.

These meetings and the decisions taken there represent the practical implementation of the desire of the New Caledonian partners (RPCR and FLNKS) and of the State to conduct a constructive and practical dialogue in pursuit of the development and realignment of the Territory.

In September 1994, at Nouméa, the partners approved the State's proposal to set up a team of planners in Nouméa, whose task it would be to help the provinces and the Territory seek investment and to follow up development projects. The Agency for the Economic Development of New Caledonia (ADECAL), a kind of DATAR (Délégation à l'aménagement du territoire et á l'action régionale), or regional development agency, was set up with the financial participation of the provinces, the Territory and the State and was officially inaugurated in February 1995 by the Minister for Overseas Departments and Territories.

The partners also agreed that a sine qua non of the Territory's economic and social development would be a comprehensive medium- and long-term plan for certain strategic sectors, which would inform decision-making. Accordingly, discussions have been held, with the participation of the State, in the following areas: energy, telecommunications. the development of the nickel industry, air transport and tourism.

In the institutional sphere, more than five years of application of the Referendum Act of 9 November 1988 had brought to light a number of problems relating to the respective areas of authority of the State, the Territory, the provinces and the municipalities. In agreement with the partners, only those technical adjustments which had been approved by consensus were retained. Parliament has passed the Organic Law of 20 February 1995 which made it possible to restate in certain areas the principles of decentralization desired by the signatories to the Matignon Accords.

The end of 1994 and the first months of 1995 have seen several meetings of the political groupings registered for the forthcoming elections in 1995 - in addition to the Presidential and municipal elections, there will also be elections for the provincial assemblies, the first since the assemblies were established under the Referendum Act of 1988; they are scheduled for 9 July 1995. Discussions have focused in particular on the future of the Territory and on the choice which will be made in the ballot for self-determination to be held in 1998.

The 6th meeting of the Committee to Monitor the Matignon Agreements was due to take place in Nouméa at the beginning of February 1995. Although, as the time approached, the two partners adopted differing positions on certain matters, they were still intent on seeking a consensus on the future of New Caledonia. When FLNKS decided, because of its desire to create a more transparent and more active partnership, that it would take part in a formal meeting of the Committee, the meeting was replaced by informal discussions between the partners. FLNKS opposed the decision to authorize the establishment of a new casino within the Meridien Hotel, which was to open at the end of February 1995, despite the fact that all three provinces were involved in the project. FLNKS noted that no progress had been made on some questions and that the working groups had not been meeting, as RPCR refused to take part in them. It called for greater commitment in order to move ahead with the work of realignment.

The partners to the accords all reaffirmed their desire not to break off the dialogue and to bring to fruition the process initiated with the Matignon Accords.

In the French Presidential elections, FLNKS left its various constituents free to choose, while PALIKA and the Union progressiste mélanésienne were in favour of boycotting the ballot in order to be consistent with their pro-independence position. Another constituent of FLNKS, the Union Calédonienne, urged its members to vote for Mr. Jospin. With regard to RPCR, one of its members of Parliament for the Territory, Mr. Lafleur, supported Mr. Balladur in the first round, but called on voters to transfer their votes "without hesitation" to Mr. Chirac in the second round. The other RPCR member of Parliament, Mr. Nenou-Pwathaho, was Chairman of the official Support Committee for Mr. Chirac.

ANNEX II

Amendments to the Referendum Act of 9 November 1988 embodying statutory arrangements preparatory to self-determination in New Caledonia in 1998

The Organic Law of 20 February 1995 amended the Act of 9 November 1988 with a view to preserving the institutional alignments arising from the Matignon Accords or to re-establish them where there had been problems of implementation or interpretation. The amendments were approved by the partners to the Accords and were favourably received by the Territorial Congress and the Territorial Consultative Committee.

FLNKS accepted these technical amendments to the Referendum Act. However, it rejected two amendments requested by RPCR deeming them political; the first sought to alter the minimum required in order for a list of candidates to be allocated seats in provincial assemblies, from 5 per cent of votes cast to 5 per cent of registered voters; the second aimed to transfer authority over gambling from the State to the provinces.

Article 1 of the Organic Law amends article 8 of the Referendum Act, which relates to the authority of the State. It augments the authority that the provinces have under ordinary law for regulating internal trade and commercial occupations, and for protecting the lagoon environment. It also confirms the de facto authority of the State over domestic maritime traffic and conferment of sports, social and educational qualifications and diplomas.

Article 2 of the Law amends article 9 of the Referendum Act, defining the authority of the Territory restrictively as animal and plant health authority in order to avoid all encroachment on provincial jurisdiction.

Article 3 of the Law supersedes article 10 of the Referendum Act, which was redundant. As the Territorial Congress had previously decided - although it had no legal basis - Congress will be able to delegate to a provincial assembly the power to modify and apply regulations concerning public health and hygiene and social welfare, and those concerning road traffic and transport, in the light of local conditions. Similarly, Congress will be able to delegate to a province, with the agreement of its assembly, the management of watercourses and of stretches of the road system which are of importance to the Territory.

Article 4 adds three new articles regarding the provincial assemblies to the Referendum Act. Article 24 states that the provincial assembly may approve submissions from a town council relating to town planning. Article 24-2 stipulates that, where a municipality has a town planning programme, the provincial assembly may, if the municipality so requests, delegate to the mayor the power to issue certain individual deeds relating to zoning. Lastly, article 24-3 allows the provincial assembly to delegate to a municipality or an association of municipalities the power to grant concessions in the provision of electricity.

Article 5 clarifies the formulation of article 32 of the Referendum Act relating to the funds of the provinces, with a view to ending the problem of how to interpret the term "local taxes", on top of which the provinces levy additional taxes.

Article 5 bis corrects the bases for calculating how much the State will contribute to the provinces of New Caledonia for the financing of schools. It provides a reassessment of this base, which was out of line with the actual financing established by the State for the benefit of the provinces.

Article 5 ter gives contractual employees in the administrative branches of public bodies of the State, the Territory, the provinces and the municipalities, the opportunity to avail themselves of the special provision laid down in article 83 of the Referendum Act, allowing them to join the Territorial civil service.

Article 6 adds an article 35-1 to the Referendum Act authorizing the President of the Territorial Congress or the President of a provincial assembly to refer for an opinion to the Administrative Court of Nouméa.

Article 14 inserts an 18 bis into article 8 of the Referendum Act authorizing the State, as from 31 December 1994, to establish the rules applicable to employees of private educational establishments contracted to the State concerning conditions of service, termination, social benefits, training opportunities and promotion and career development opportunities for qualified teachers in State education (an extension of the application of the Guermeur Act). These amendments will also apply in French polynesia.

ANNEX III

Preparing for the 1998 referendum in New Caledonia

In April 1991 RPCR, led by Mr. Jacques Lafleur, proposed the idea of a consensus solution in order to avoid the "guillotine referendum" nature of the self-determination referendum which is due to be held between 1 March and 31 December 1998 (article 2 of the Act of 9 November 1988).

FLNKS, for its part, favoured strict implementation of the Referendum Act and felt that the latter could not be amended before the vote took place.

At the time of the annual meeting of the Committee to Monitor the Matignon Accords, held in Paris in February 1993, a change was becoming apparent within the ranks of FLNKS. Its delegation wanted discussions to begin immediately between the two parties concerning the choice to be made at the 1998 vote. RPCR stated that it was unwilling to enter into discussions until after the provincial elections of 1995.

FLNKS and RPCR reiterated their positions at the intermediate committee meetings in Koné (February 1994) and Nouméa (September 1994).

The position of principle of FLNKS, namely, that the Referendum Act should remain unchanged until the 1998 vote, was also changing. In September 1994 a consensus emerged between the two sides in favour of making certain technical adjustments, in order to restore the principles of decentralization, as enshrined in the Matignon Accords (Organic Law of 20 February 1995).

When the Minister for Overseas Departments and Territories visited Nouméa in February 1995, to preside over the annual meeting of the monitoring committee, FLNKS refused to attend. It did, however, agree to an informal meeting of the two sides, after which Mr. Neaoutyine and Mr. Lafleur declared that their dialogue would continue and that they were prepared to talk after the 1995 elections. The Minister for Overseas Departments and Territories stressed the importance of giving consideration to the method of work to be applied in preparing for the 1998 vote. He had made a number of proposals in that respect during the informal meeting.

The two New Caledonian leaders are clearly determined to find a way of preventing the 1998 vote from becoming a "guillotine referendum".

They are also convinced that the new President of France and the Government will stay within the framework of the Matignon Accords.

The Union Calédonienne, the majority party within FLNKS, has already begun to think about this. Taking stock of the party's twenty-fifth congress in November 1994, Mr. Burck said: "Those who say that we are not ready for independence in 1998 are correct." Quoting Jean-Marie Tjibaou, he recalled that "Independence itself is not negotiable; not so the steps by which it will be reached."

While emphasizing its opposition to the idea of a 30-year pact similar to the Matignon Accords, favoured by Mr. Lafleur, the Union Calédonienne has decided to give priority, immediately after the 1995 elections, to negotiations on the transfer of certain aspects of sovereignty. These negotiations would involve establishing the stages of the process, and defining a time-frame.

The Union Calédonienne believes that this gradual transfer of power to the Territory or the provinces could involve such things as immigration, external trade, natural resources (mines), education, labour law and vocational training.

Implementing this process, if agreement is reached, will mean modifying current statutes by means of an organic law.

The Union Calédonienne's idea would be to elaborate, by the end of 1998, a new status for the Territory; that status would be the object of the referendum.

After the first round of voting in the presidential election, Mr. Burck, President of the Union Calédonienne, declared that the best president would be "one who will be prepared to enter into a dialogue with us, with a view to granting us independence". Mr. Lafleur announced that proposals for a consensus solution would be discussed with the other parties to the Matignon Accords once the elections for the provincial assemblies were over; those elections are scheduled for 9 July 1995. He said that he would like the discussions to be open for all other interested parties in the Territory, such as trade unions, socio-professional organizations and management.

At the informal meeting of the parties to the Matignon Accords, held in February 1995 in Nouméa, the Minister for Overseas Departments and Territories indicated that the State would play a full part in future discussions. He proposed that the parties should, without waiting for the provincial elections, together work out a method which could lead to the setting up of a permanent operational organization.

ANNEX IV

Draft summary of conclusions of the second intermediate meeting of the Committee to Monitor the Matignon Accords in Nouméa on 15 September 1994

At its fifth meeting, the Committee to Monitor the Matignon Accords decided that holding decentralized quarterly meetings would contribute to the efficient implementation of its decisions.

The meeting in Koné, on 22 February 1994, was followed on 15 September 1994 by a second intermediate meeting of the monitoring committee; the latter was chaired by Mr. Dominique Perben, Minister for Overseas Departments and Territories, and was held in Nouméa. The delegations of RPCR and FLNKS were led by Mr. Jacques Lafleur, deputy for New Caledonia, and Mr. Rock Wamytan, the Vice-President of FLNKS.

1. Economic development and realignment

At the 5th meeting of the Committee to Monitor the Matignon Accords, the partners expressed the wish to see a small team of economists and planners given the task of helping the provinces and the Territory attract productive investments, and of seeking out and following up development projects.

The main lines of the report by Mr. Viger, Commissioner for the industrial redevelopment of Lorraine, who had come to the Territory on mission from 6 to 13 July 1994, were approved.

The main tasks of this structure would be to seek out new activities and to contribute to local development. It could assist communities and organizations in matters regarding development, and would be based on an association grouping all concerned social, economic and political institutions. Members of the association would thus have power to guide and supervise the activities of the development team.

The partners stressed the importance such a structure would have for the Territory. They felt that it should be made up of a small team of specialists, that it should complement - but should not interfere with - the activities of the provinces, which are responsible for development, that it should integrate the town and country planning dimension into its work of seeking out investment and developing activities and that its activities as a provider of services and its normal role should be clearly defined.

The partners agreed that Mr. Viger should return to the Territory the following month to go more deeply into the tasks of the development structure and to clarify how it would operate. He would present a projected budget as well as sources of finance and would determine how the body would be set up; it would also be necessary to find a name for the body, which would have to be operational from the beginning of 1995. Having regard for the need for financial backing, he might set up a very small skeleton organization which would function until the definitive structure was established.

It was stressed that this organization would be able to work with the municipalities.

2. Questions relating to the allocation of authority

More than five years of applying the law of 9 November 1988, which embodied statutory provisions preparatory to the exercise of self-determination in New Caledonia in 1998, have revealed a number of problems relating to the respective areas of competence of the State, the Territory, the provinces and the municipalities.

It was noted, for example, that the authority of the provinces and the municipalities were being called into question in certain matters and that this conflicted with the institutional balance established by the Referendum Act. This had also resulted in legal uncertainties and increased complexity in the administration of New Caledonian communities. A list of the principal matters in question was communicated to the partners in the file given to them before the intermediate meeting of the monitoring committee.

The partners agreed that it would be advisable to make technical adjustments to the Referendum Act of 9 November 1988 in order to regain the spirit and return to the principles of decentralization desired by the signatories of the Matignon and Oudinot Accords.

Taking into consideration the timetable provided by the Minister for Overseas Departments and Territories, they decided to meet very speedily in order to draw up together a list of technical adjustments so that the draft organic law in which they would be incorporated could, after consultation with Congress and the New Caledonia consultative committee, be introduced and voted on at the next parliamentary session.

The Minister for Overseas Departments and Territories assured the partners that the Government was committed to making sure that this modification to the Referendum Act would affect only the technical problems which had been identified and to which their agreement had been secured.

3. Coherence in the economic development of the Territory

The partners agreed that a sine qua non of the Territory's economic and social development would be a comprehensive medium- and long-term plan for certain strategic sectors, which would inform decision-making. They favoured the idea of having in-depth discussions, with the participation of the State, in the following areas:

3.1 Electricity

Within the Territory, this sector requires greater expertise regarding the organization of production, distribution and the setting of rates.

FLNKS pointed out that rates would have to be reviewed in the very near future to ensure a sound financial footing for "ENERCAL", and the "energy" working group of the monitoring committee decided to ask a private company to

audit the sector. This audit was not undertaken since merely resorting to a private company seemed insufficient.

It was decided that a comprehensive survey of the electricity sector would be launched immediately. It could be carried out by a commission of government officials including, for example, representatives of the tax inspectorate and of the Ministry of Industry. It is possible that studies of particular issues will also be undertaken.

3.2 Telecommunications

There are a number of questions in this sector: the status of the office for telecommunications, concerning which the working group has made some proposals, renegotiation of the office's agreement with Société France Câbles et Radio and, finally, the regulation of postal and telecommunications services.

It was decided that these three topics would be considered simultaneously.

3.3 Nickel

Aside from the recent decision to raise the ceiling on the highest grade of nickel ore authorized for export, it was decided that the monitoring committee should be kept regularly informed regarding developments in the nickel sector.

Arbitration procedures are under way regarding the estimates of Bureau de recherches géologiques et minières (BRGM) and Société le Nickel (SLN) regarding the concessions in the north, so as to facilitate the agreement of the parties.

3.4 Air transport and tourism

What with the opening of the skies and the increase in the total amount of tourist accommodation, this sector is developing rapidly.

It would be necessary to think about reorganizing facilities at Tontouta airport, increasing services in light of the expected economic development and increase of tourism in the Territory, and also about the income from tourism. The position of the regional company would have to be considered in this context. FLNKS would like to strengthen the regional position of Air Calédonie International by, for example, designating this company to provide service on all sections of the Sydney-Nouméa-Sydney route.

An ad hoc working group will keep the parties regularly and fully informed and will also ensure consistency of thought and initiatives.

3.5 Nepoui

It was recalled that this project is important in terms of realignment, and that it therefore involves the whole Territory.

It has been agreed that the steering committee will meet in the very near future, and that it will consider the final report on the first conditional section of the study.

4. Progress achieved and other matters

Before meeting in Nouméa, the partners were given a progress report on what had happened following the December 1993 meeting of the monitoring committee and the intermediate meeting in Koné on 22 February 1994.

The Minister for Overseas Departments and Territories announced that the questions of pensions for teachers in private schools and of the status of agricultural cooperatives should be regulated by Parliament in the coming months. He also stated that the agence nationale pour l'insertion et la promotion des travailleurs de l'outre-mer (ANT) would very soon send a mission to the Territory in order to consider the contribution it could make to the training of young Caledonians.

The election timetable for 1995 was also presented, and attention was drawn to the need to set a date for the provincial elections. That will be discussed at the sixth meeting of the monitoring committee. The number of legislative constituencies will depend on the results of the next census and the reform of the electoral system will depend on agreement being reached between the partners.

FLNKS drew attention to the Jean-Marie Tjibaou cultural centre. It was agreed that the main priority was to work out carefully how the centre would operate and how much it would cost as well as to provide funds for what are known as "prefiguration" activities during the intermediate period 1994 to 1996. The Ministry of Overseas Departments and Territories and the Ministry of Culture will continue discussions on this matter.

Regarding royalties, a proposal has already been laid before the consultative committee, but without success. With the agreement of the parties, there will be a fresh round of consultations on the initiative of the High Commissioner within the said committee.

The Minister for Overseas Departments and Territories noted that a decision was awaited from the Prime Minister on the issue of the 1995 population census. RPCR expressed the hope that there would be a simplified questionnaire.

It was decided that particular attention would be given to the training and employment of nationals from the Territory, especially as regards employment in the public sector. The High Commissioner was entrusted with this task.

It was stated that fishing agreements concerning the economic zone of New Caledonia would be the subject of extensive preliminary consultations with the elected representatives of the Territory and that the latter would continue to play a role in the delegation negotiating the agreements.

There was an exchange of views on the date of the sixth meeting of the Committee to Monitor the Matignon Accords; the meeting could be held at the beginning of 1995.

ANNEX V

Agency for the Economic Development of New Caledonia

The partners on the Committee to Monitor the Matignon Accords had agreed in December 1993 that economic development and the realignment of activities in the Territory required the adoption of new methods to obtain speedier results.

The Committee had therefore accepted the proposal to establish a small team of economists and planners alongside the representative of the State in order to help the authorities of the Territory to define their long-term economic policies and to encourage the implementation of investment projects.

At the February 1994 meeting of the monitoring committee, the partners reaffirmed their wish to see this team established alongside the High Commissioner; its tasks would be, inter alia, to attract productive investments, and to seek out and follow up projects.

The Minister for Overseas Departments and Territories, in agreement with the Director of the regional development agency, decided to ask Mr. Michel Viger, the commissioner for the industrial redevelopment of Lorraine, to visit and provide expert advice.

This mission (from 6 to 13 July 1994) produced a report which was favourably received by all the partners on the Committee at its meeting of 15 September 1994 in Nouméa.

The Minister for Overseas Departments and Territories then decided to implement the conclusions of the report immediately and assigned Mr. Viger the task of preparing a structure for economic development modelled on the industrialization departments of the regional development agency in France. To this end, the statutes of an association under the Act of 1901 were filed in Nouméa on 25 January 1995.

This association, called the Agency for the Economic Development of New Caledonia (ADECAL), brings together inter alia the State, the Territory of New Caledonia and the three provinces. It is also open to all those who wish to work for the economic development of New Caledonia, including the chambers of commerce and private businesses.

The Agency for the Economic Development of New Caledonia has been given a budget of 8 million French francs for 1995 divided up as follows: State FF 3 million, Territory FF 3 million and provinces FF 2 million (FF 1 million for South province, FF 640,000 for North province and FF 360,000 for Loyalty Islands province).

In addition to Mr. Viger, the team consists of a local development officer (Mr. Ptolet), an international development officer (Mr. Hubert-Delisle), an administrative assistant, a secretary and a driver.

The Agency was officially set up by the Minister for Overseas Departments and Territories at the beginning of February 1995; its programme of action for 1995 focuses on three themes: local development; town and country planning; and an international effort to seek out French and foreign investments.

Two decrees were issued on 23 February 1995; one established the post of Commissioner for the Economic Development of New Caledonia, the other appointed Mr. Michel Viger to this post.

Since its appointment the Agency's board of directors has approved membership applications from the Caisse française de développement (French Development Fund), the Banque calédonienne d'investissement and Energie Nouvelle-Calédonie.

Three further requests will be considered at the next board meeting. These are from the Chamber of Commerce and Industry, the Chamber of Trades and the Economic and Social Committee.

ANNEX VI

Interviews with Mr. Dominique Perben, Minister for Overseas Departments and Territories (Radio Rhythme Bleu)

7 February 1995

Elisabeth Nouar, journalist: Good morning Minister. Thank you for agreeing to join us once again for breakfast in the RRB studios. This is your fourth visit to New Caledonia, and this has become almost a tradition. Thank you for going along with it. You gave a long interview, before your arrival, to the daily Les Nouvelles; you naturally spoke at Tontouta on Friday; and the next day at Pouembout, to announce the aid to be granted to stockbreeders.

Tomorrow, the sixth annual meeting of the Committee to Monitor the Matignon Accords is to begin and you will, of course, be saying the content of your speech for the partners in the Accords. In fact we were wondering just what we would be able to ask you this morning, but then we realized that there are actually a good many questions which have been left to one side, so we have several questions to ask you before the Monitoring Committee meeting begins tomorrow.

Perhaps we could ask you to say a word, in your capacity as Minister for Overseas Departments and Territories on Polynesia about which relatively little has been said. Did the visit go well? There is a feeling that perhaps it didn't, that there were a few problems.

Mr. Dominique Perben: I had three aims in going to Polynesia. Firstly I wished to review the conditions for the implementation of the February 1994 Act, which we call the policy guidelines Act, and to see what the position was as regards the development agreement. The meeting was held, it was held in a not always very cooperative atmosphere, or rather, to be frank, a not always very pleasant atmosphere, as one of the partners - the Territorial Government - wished to demonstrate, or perhaps I should say insisted on demonstrating, that the Government of Mr. Balladur - who is not the candidate chosen by Mr. Flosse - had not done enough. Quite apart from the slightly forced nature of this insistence - which incidentally a good many people in Polynesia found rather amusing, since they understood full well what was going on - it did rather get in the way of our work. Despite that, we did look very seriously at the Act and the development agreement and on the whole I think we saw clearly both what had worked well in the health and social sector in particular and also what required closer collaboration between the officials of the Territory and of the State.

Elisabeth Nouar: And then, after Polynesia, New Caledonia. You arrived on Friday and your first visit was on Saturday morning to Pouembout to meet stockbreeders and farmers.

Now you have seen the condition of the bush, what is your feeling about the land first of all? What is your reaction to the drought?

Mr. Perben: There are two points. First of all, the drought, which is unfortunately not new this year but rather the accumulation of several years of drought, is very worrying. Those farmers, for example, who have been able to produce fodder in the humid regions have managed, but those who have not been able to feed their livestock properly are having an extremely difficult time. So we have decided to allocate 36 million francs in aid, which will be made available to the High Commissioner. This will function as aid, as financing to these farmers in particular, and will probably help them to get through this still difficult time. However, I would like to say that the morning I spent with the stockbreeders I found very interesting and I got a great deal out of the time I spent talking to them. Even though I had been here three times before, I did not really know anything about them. I went out onto their land with them to get some idea of their work situation and I have a good deal of admiration for their occupation, their way of life, the way they go about things. I shall remember this for a long time, if I may say so.

Elisabeth Nouar: The question still needs to be asked, however, is 36 million enough? Isn't it rather meagre, in view of the widespread damage the drought has done?

Mr. Perben: Well, we'll see, I think it should be enough. I should add that the State is not working alone, but several sources of aid have been established.

Elisabeth Nouar: Quite so - if we look at what the other groups are doing, do we not get the feeling that the State is not pulling its weight?

Mr. Perben: Well, you also have to look at the way the institutions work. The State is helping here in an area which does not really concern it, as financial authority rests essentially with the Territory or the provinces. So I think we need to see how the land lies, to look at particular cases. We will have to see to some extent what form the intervention will take.

I have spoken to experts about this, and they appeared to be happy with the aid. We will see what happens as time goes on and we will also see how the weather develops. In theory, the so-called rainy season is not over, but really that's another question as, to make up for the lack of water of these last four or five years, we would need several months of rain.

Elisabeth Nouar: Tomorrow comes the focal point of this, your fourth visit to New Caledonia, the sixth meeting of the Committee to Monitor the Matignon Accords, and this will be the first of the annual meetings of the Committee to be held in Nouméa. Now, at each of these meetings, there is always one major idea, one dominant theme. I won't ask you to reveal anything that you naturally wish to keep for those participating in the work, but could I ask you what is your attitude as you approach the meeting? What do you think the tone of this Committee meeting will be and what do you think may come out of it?

Mr. Perben: To answer that, I think we need to start with a very basic point. It is now February 1995 and we are entering an election period, with the presidential and provincial elections in April and May and the municipal elections in June and July. This means that it is very important to use this

February meeting to set in motion several ideas or thoughts because I don't think we will be meeting again until September now. If this meeting is not highly productive in terms of conclusions, positions, and the will to get several things moving, then we are in danger of losing six months.

I am well aware that this is not, shall we say - and it's true - an ideal moment: this is the message from several quarters, but despite the political constraints, it is because I do not want us all to waste time during the next six months that I have been anxious to have this meeting now. This is also why we will naturally be raising political issues and I hope that we will raise the question of how to continue our discussions after July or August, because that is a matter we will have to go right into. I know that my partners are now determined to have such discussions but we will only succeed, once the elections are over, if we begin thinking now about how to go about it. We will, of course, also have to discuss the date of the provincial elections. This has not yet been decided and I would like to return to Paris with an agreement regarding the date - I think this is a fairly good opportunity to discuss it. And then we have a whole series of major economic questions which we have already begun working on, and we have made good progress in the last six months.

ADECAL, the development association, the agency for development, will soon be in its office, this is good, it means that people have worked hard and set it up and it has started working. I think it is coming up to the expectations of both sides. We will be addressing the nickel question, we'll be talking about electric power, and also about realignment. It's something we have talked about a lot but it needs to be discussed in concrete terms and I would like, for example, to come back to the specific strategy to be applied on the Nepoui project. This seems to me to be very important but we must talk about it in a very specific, concrete, operational way and not simply using studies which are rather too theoretical. So I think we have enough to be going on with for these two days, Tuesday and Wednesday. As I said, once these two days of work are over, I would like there to be a kind of "holiday assignment", if I may use that expression, for everybody for the next six months so that we will not waste any time, and when we meet again in August or September - by which time many things may have changed - we will not be starting cold after six months' complete inactivity.

Elisabeth Nouar: Still, there is some tension, or let's say some friction, over this Committee, which maybe is natural. You expected, no doubt, the kind of climate where people seem to be trying to find their bearings and calling on you for explanations on different subjects.

Mr. Perben: I think in a way that when someone from the Government is present, it's the rule of the game for people to somehow call the Government to witness when making their points. You know my way of doing things; I'm the kind of person who always tries to stay calm and keep talking with all concerned. The Union Calédonienne (UC) took a fairly strong position yesterday evening in a communiqué.

Elisabeth Nouar: That communiqué was issued last night and our listeners don't yet know about it because it aired after newspaper publication times; so, to fill people in, this communiqué is a reaction to the authorization given by the

representative of the Government for the opening of a casino in the Méridien Hotel. UC deplores - and I quote - "the contempt displayed towards the pro-independence representatives". UC calls upon you, as Minister for Overseas Departments and Territories, to give your interpretation of this realignment, which in its view comes down to complicity with RPCR, and it insists that the Government should reconsider its position before the Committee meets. What will your answer be to that?

Mr. Perben: Well, the simple facts are, first, that this proposal to build a hotel complex and a casino was not thought up out of the blue, two weeks ago, by a few people. Let me remind you that the tax-exemption decisions making this operation possible go back to 1992. It was not the Balladur administration but the previous one that gave the authorization to use tax-exempt funds for this project, which planned for - and everyone knew it at the time - both a hotel and a casino. And let me remind you also that all three provinces are shareholders in this operation. So no one can come and say to me today that the Government is promoting an operation that had not been spelled out for all to know.

Therefore, I think we must keep here. At the time, of course, everyone thought the authorization would be given not by the State but by the province, and in fact many people might perhaps have been more comfortable with that. It seems that the Council of Government has decided otherwise; I could have done without that, but I enforce the law. Let me add that the High Commissioner has worked out standing regulations on gambling that are good regulations, and he did it, by the way, after consulting with people where this project was concerned. My view is that this project was already out of the starting gate and the economic choices had been made; and I would say that the only decision that has been taken is the decision to open the doors of the establishment, whereas the decision to build the establishment was made three years ago. So, let's not reverse the order of things. Given the situation, what is the issue today? The issue is to understand the possible economic consequences of starting up the operation, bearing in mind that it will not open its doors immediately because there are both operational and regulatory delays. The State is, of course, perfectly ready to consider ways of reordering the economic alignment, and that is what I would propose to my partners, because we are in a sense the guarantors of maintaining the overall balance of the economy.

I think we must ask ourselves another question, which is how best to put into effect this realignment policy that you were speaking of a moment ago and which is the subtext of the communiqué. I think that realignment is a matter of investment much more than of curbing development. Let me give an example: [Goro. Nickel] is, as you know, very much in the news. If that goes through ... The mining of laterites, of lateritic nickel deposits, is done in South province for geographical reasons. But, if the project does in fact go through, it will involve Loyalty Islands province, where calcareous deposits have to be extracted, and so that will entail a certain amount of work. Also, it will involve North province on account of electrical power needs and electrical power production. In this kind of project, which for geographical reasons is primarily of interest to South province, we can find a way, if we sit down together to think productively with the assistance of the State, to have the other two provinces participate in the project as well.

I give this as an example because I think it's a good illustration of how realignment must be conceived. Realignment must not be achieved by preventing the development of some on the grounds that it would be at the expense of others. Realignment must be achieved in such a way as to make everyone advance, and to turn the good fortune of some to the benefit of others. Therefore, we have to make more of an effort to hold to this approach, which could not be more positive.

Nicolas Vignoles, journalist: But isn't it true that the youth project was badly run from the very start? Was there any point in deferring the authorization?

Mr. Perben: The project file had to be completed. These are very complicated matters, you know, and I'm not going to get into the legal aspect because, in any case, it is not my field, any more than it is actually my role. What I can tell you is that it was not simple because the State took everyone a bit by surprise with its view that it was a government responsibility. We had at one time considered passing on the responsibility to the provinces by proposing a bill last fall. Well, there was no consensus on that and so by November I was convinced that the State had to carry the project forward. As you can see, a lot of time had already been lost.

At that point, the High Commissioner found that, of all things, there were no rules governing the matter. The rules therefore had to be determined, and such things have to be done properly because issues of public order, security and individual rights are involved. Next, the complete project file had to be formally deposited by the petitioners before a decision could be taken. So I really think that we went forward as quickly as possible in view of the time constraints and I don't see that six months sooner or six months later would have made much difference. What mattered was that the investors should not find themselves in a bad situation. In fact, let's step back a bit and think what is at issue here: let's imagine for a second that the authorization had not been given. Do you think that, the next time, any new investors would have been found for either North province, Loyalty Islands province or South province? Just suppose that people who had had taxes waived, who had launched an operation, who had begun construction, should find themselves unable to operate an establishment. Would that have been the best way to attract private savings, to attract investors to come to New Caledonia to develop the Territory?

No, I think we have to be smart about this. We all know that what matters - and this is in fact one of the goals of ADECAL - is to see to it that, over and above the public investment, there is extensive private investment throughout the Territory. That is what concerns me and what seems to me more important than any other consideration.

Elisabeth Nouar: Minister, it's now been 25 minutes that we've been speaking and this interview is drawing to a close. We would like to come back for a moment to the substance of the Matignon Accords. Over all, they're working. I believe that everyone here and in France proper has noted that peace has been re-established and there has been some development and a realignment. But beyond the positive aspects of the Accords, one is prompted to ask you: just what is missing six years after their signing that keeps them from working

better, that would avert these surges of tension, these frictions? Actually, some points have been brought out here and there and a few observations have been made on which we would particularly like your views.

For instance, there are the absence of decentralization, the less than complete confidence among the partners, or the fear of media reaction. For a start, overregulation and the failure to decentralize have recently been condemned by Jacques Lafleur. He has done so several times, most particularly after the meeting he held with you the other day. When speaking of the matter, one always has the impression that a certain game is being played, that the Administration, or the Administrative Tribunal, is not necessarily acting in the spirit of the Accords, which advocate greater decentralization. One always has the impression that the State is having trouble handing over responsibility. Doesn't this actually compromise the Accords?

Isn't there also the further danger of slipping back into the state of violence we once experienced, given the fact that the violence had been justified as a demand for greater responsibilities? In the final analysis, shouldn't the matter be handed over to Caledonian officials?

Mr. Perben: You're right to underscore the need for a continuous, progressive decentralization. Otherwise, that leads to rather silly legal problems. I think that we need full political consensus that the law here in New Caledonia must be imbued with the spirit of the Matignon Accords. I can tell you that, as far as the Government is concerned, that is perfectly obvious. What happens is that there are a few specific judicial decisions whose effect is to throw responsibility back up towards the top. Inevitably, with the law adopted in Parliament, we will have to do again what we have been doing these last weeks, which is to clamp down somewhat systematically to make sure that responsibility does not seep back up.

It's very clear that, as part of the preparations for 1998, we will have to work on the legal side to actually imprint the spirit of the Matignon Accords - that is, this spirit of specificity, of autonomy, as it were - on the legal system. Reactions like that of Jacques Lafleur the other day are precisely an indication of how very difficult it is for the Administration and for traditional French law to swallow the fact that we are thousands of miles away from mainland France, with our own features, our own traditional ways of life, and that the laws have to be made to reflect this better. I am completely convinced of this; it is a priority and needs to be worked on, and that will be one of the subjects we are going to have to discuss with our partners.

Nicolas Vignoles: The most recent case in point is in the maritime sector, which is now under State ownership, as regards the landfill issue.

Mr. Perben: It was always under State ownership, but opinions were, shall we say, divided.

Nicolas Vignoles: And then there is the issue of the landfills whose ownership is no longer transferable. I believe, in fact, that the RRB facilities are to be built on landfill, as in any case is the whole centre city of Nouméa. Is not this kind of decision the ultimate absurdity?

Mr. Perben: In every such instance, difficulties arise, so I would like to go back a moment to answer the preceding question. What should be done to go about applying the Matignon Accords in less of a crisis atmosphere if possible?

Let me tell you that the crux of the matter is that we, the three partners, must learn to live more successfully through the crises and the inevitable differences of opinion. In politics, as indeed in other areas of life, there are always difficulties and disagreements. It shouldn't be that every time a disagreement crops up there is the feeling that it undermines everything that has been built up.

I believe we are still engaged in a kind of apprenticeship as to the way of handling disagreements in a calm spirit, without having them become a matter of State each time. Not that disagreements should be encouraged, but in life there will always be some, and when we start discussions on 1998 we are not going to come to an agreement at the very first meeting.

Two years of dogged work will be needed to make headway, assuming we reach a so-called consensus solution. But if we don't know how to handle disagreements, there will be crises at every step of the way; and that certainly is tiring for everyone, tiring in the full sense of the word, which is to say that it is dangerous for everyone. Therefore, I think that this is in a way my message of hope: let's learn to handle in a calmer frame of mind the inevitable disagreements we have and will have in the future. Then, the legal questions of the landfill type, well, the State will have to learn to handle them too, so that our legislation can correspond better to how things stand in Caledonia, which is different from how things stand in mainland France.

Elisabeth Nouar: Do you find that the instances of lack of confidence are exaggerated? Presumably you believe that confidence does exist among the three partners.

Mr. Perben: Yes, I think that there is genuine confidence, that the present anxiety is very understandable and is linked to the electoral results. It was the same when, before 1993, the FLNKS partners were anxious over the shift in majority. I think I can say they were not reassured until after the speech I made to Congress in June 1993, when I conveyed Prime Minister Balladur's message that there would be a monitoring of the Matignon Accords. I believe that today, despite the contacts that all concerned were able to establish in Paris with all the possible presidential contenders, people are somehow worried about the emergence of a kind of sole power here in New Caledonia. I think such a worry must absolutely be dispelled. Obviously I can't speak for everyone, but I can at least speak on behalf of the Prime Minister, and I can say that his political approach is truly to pursue the policy of the Matignon Accords and to prepare for 1998 with the intention of reaching a consensus solution. I should think that ought to reassure our Caledonian partners.

Elisabeth Nouar: And the strained relations between elected officials and the High Commissioner are normal, are part of this lack of confidence?

Mr. Perben: I don't know how things stand in that area, but relations between people vary, they are either good or less good. I think we have to keep a little perspective on this kind of thing.

Nicolas Vignoles: There is a possible third curb, the media reaction. Doesn't the fear that tensions and problems will be brought into the limelight somehow serve to slow down the decisions on projects? A lack of boldness comes across, a certain hesitation in order to avoid negative reactions on New Caledonia in the media.

Mr. Perben: I think the point is that some projects that are difficult in terms of their objectives rather than in political terms call for a great deal of work; and these projects require some time to be carried forward. But I would like to emphasize that since the month of September, for instance, at the latest intermediate meeting of the Committee to Monitor the Matignon Accords in Nouméa, we have made good headway on a number of projects.

ADECAL has been set up, agreements have been concluded between SLN and BRGM, and therefore SLN will be able to buy back mining sites at decent terms and launch a new investment plan. This is very important and is one of the concerns of the elected Caledonian officials.

We have made progress on the energy project, we will have to make progress on tourist matters, and we did move ahead on aeronautical questions. It would be interesting, too, to make a list of all the issues that have been settled in the last 6 to 12 months. It is a very long list and involves very specific projects that are important for the economic development of the Territory.

Just remember the discussions we were having not so long ago on opening up our air space; this opening up has taken place, and the expansion of tourism is now a fact. That means that from here on in we will be able to build a Caledonian tourist industry.

Elisabeth Nouar: To bring this interview to a close, Minister, we will engage in a little bit of political speculation because that's what everyone does, why not? You have already been asked about your future, of course. You have been Minister for Overseas Departments and Territories for almost two years: do you want to continue doing that? Is the Caledonia portfolio still engrossing to you? You were just saying ... you were speaking a moment ago about the fact that in 6 or 10 months, the work will still be under way. Where would you like to be in a future Government?

Mr. Perben: No, I would simply like to say that the Caledonia portfolio, like the other overseas portfolios, in fact, especially the Caledonian one, is very fascinating because it has to do with the nature of relations between people, it involves friendships that are necessarily formed, and a respect that emerges from relations between all concerned - so that I am completely engrossed in these subjects.

I notice in the annals of this Ministry that many of the ministers remained in their posts for a long time, so I don't know if it's a habit. As for the

rest, well, I can't tell you anything because I'm not the one who is going to be deciding in any case.

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Visit of the Minister for Overseas Departments and Territories

Replacement of the Committee to Monitor the Matignon Accords by a Tripartite Meeting of the Signatories of the Matignon Accords

8 February 1995

Elisabeth Nouar, journalist: The sixth meeting of the Committee to Monitor the Matignon Accords did not take place yesterday. However, its main purpose was protected and the partners to the Accords reaffirmed their commitment to continue the process.

Yesterday morning's tense and strained atmosphere gave way to expressions of deep feelings. The tripartite meeting attended by the three partners to the Matignon Accords took place yesterday afternoon in a climate of frank and serious discussion.

Nevertheless, it is true that yesterday was an unusual day, and very confused at first. But the partners to the Accords came together and resumed their dialogue, which apparently was characterized by frankness on all sides.

The events were touched off by the confirmation of the refusal of FLNKS to participate in the sixth meeting of the Committee to Monitor the Matignon Accords. As justification for their position, Paul Neaoutyine and the independence coalition pointed to the Méridien Casino issue, but especially the lack of real dialogue and transparency within the partnership.

At the same time, Nidoish Naisseline went further by asserting that the State was biased. By late morning, it was clear that the sixth meeting of the Committee would not take place.

The Minister for Overseas Departments and Territories then made a statement to the press expressing his regret and surprise. Late yesterday afternoon the episode came to a close when the partners to the Accords met for almost two hours at the official residence for a tripartite meeting termed informal, but which salvaged the failed meeting of the Committee just in time.

The partners talked to each other and said what was on their minds, as Jacques Lafleur briefly indicated at the close of this meeting.

Jacques Lafleur: We told each other what was on our minds. Paul Neaoutyine said his piece, and I said mine. The Minister as well.

To me, the most important thing was that, despite the possibility that unfounded accusations were made because of the elections, we still agreed to continue our dialogue within the framework of the Matignon Accords.

As I said a little while ago, when you do something like this once in your lifetime, you become quite determined.

Elisabeth Nouar: They said what they had to say to each other, and beyond continuing the dialogue, it was clear from the statement of Paul Neaoutyine, who headed the independence party delegation, that each party reaffirmed its commitment to the Accords process.

Paul Neaoutyine: I stressed that, as the beneficiaries of the legacy of Jean-Marie Tjibaou, our participation was voluntary, and that we wished to see the process through to the end. We have a culture and a personality and we want that to be recognized. People like us don't understand when we are presented with a fait accompli on matters that, in our view, should have been discussed either in working groups or in the Committee.

We are part of a process that all three of us agreed to. This process cannot reach its rightful conclusion unless its balance is maintained on all points. Our position, of course, is to indicate our points of disagreement politically at this particular time and to return with our partners to a more transparent and active partnership in pursuing these things, especially in the discussions on the country's future.

Elisabeth Nouar: The Minister for Overseas Departments and Territories speaks of a good, frank and serious atmosphere. We reached Dominique Perben by telephone last evening, and he agreed to discuss again the tone of the meeting, which he said would be among the most important he had attended on Caledonian affairs. It appears from what Dominique Perben said that the main points have been preserved.

Dominique Perben: ... the cancellation, you might say, of the morning's monitoring committee meeting, and then there was finally this so-called informal, private contact at 5 p.m., when we again met with the FLNKS and the RPCR, and beyond any technical agenda, it was a time for explanations. Now what do I mean by "explanations"? I mean that Jacques Lafleur, very intensely, or Paul Neaoutyine or myself, we said what was on our minds. Each of us, I think, in our own way, reaffirmed our belief that we had to continue our dialogue, continue to build peace, understanding and development in New Caledonia.

Basically, for me it was the most unusual meeting in two years because these meetings are usually somewhat technical or technocratic in nature, whereas there, everyone spoke his mind, and I, for one, said to the others at the meeting - to whom, I might add, I might have been speaking for the last time, since their term of office ends on 15 May - that I was confident about the future but also that everything was still fragile, and that we political leaders should be aware of our responsibilities.

I couldn't help remembering what happened yesterday. As I said to Jacques Lafleur, a signatory to the Matignon Accords, and Marie-Claude Tjibaou, I found myself there, on the site of the Jean-Marie Tjibaou cultural centre, and what happened yesterday, I admit, I was thinking about it during this meeting. I think what happened at the meeting was very positive. I think it was the

reaffirmation, for the three partners, of their common willingness to carry on a dialogue, to find peace and to develop New Caledonia.

Elisabeth Nouar: To come back a bit to this busy day, isn't it possible that this morning was not the appropriate time?

Dominique Perben: Well, I think there was a chain of events, maybe we didn't give each other enough information. In a way I would say that's not important; what matters is that we got together again. I really believe very sincerely and deeply that we must not waste any more time. There are a number of matters we would have discussed in the Committee that we will have to talk about in a new way over the coming days and weeks. We must think about the future - maybe the events of yesterday and today have given a sort of signal that what appeared simple on the surface will perhaps be less so. The partners and people of good will may need a great deal of resolve and determination to make it to the 1998 elections.

Elisabeth Nouar: The tripartite meeting, which, according to all the participants, was highlighted by a strong, moving statement by Jacques Lafleur, was the epilogue to what might have appeared to be a crisis among the partners. "We must be careful that the ties do not appear to be cut, that could be a matter of concern", Dominique Perben had said that morning.

The reasons for these strains could very well lie outside the situation itself. The election period, with all it entails, is certainly not far removed from the prevailing atmosphere of yesterday morning. The question of excessive media coverage could also be raised - it is risky for meetings like this; it's as if the hunger of the press for news items makes it take hopes for reality, tensions for a rupture.

On the Minister's schedule today is the inauguration of the Association for the Economic Development of New Caledonia. The Minister for Overseas Departments and Territories, Dominique Perben, will leave New Caledonia at 2.40 p.m. for France.

ANNEX VII

Interview with Mr. Dominique Perben, Minister for Overseas Departments and Territories, 7 February 1995 (Radio DJIIDO)

Nicole Waia, journalist: Good morning to all our listeners. Today we are pleased to welcome Mr. Dominique Perben, the Minister for Overseas Departments and Territories. I should like to take this opportunity to point out that this is the first time since the establishment of Radio DJIIDO that a French Minister of Government has consented to take part in a live broadcast here. Mr. Minister, good morning and welcome to our programme.

You are here to chair the 6th meeting of the Committee to Monitor the Matignon Accords, and I believe it is customary to ask what your frame of mind is at the outset of this meeting of the Committee, which ought to be starting in a few hours' time, because as we heard yesterday evening, the Front de libération nationale kanake socialiste (FLNKS) intends to boycott the meeting, so I believe that everyone is eager to find out your reaction to this and to know whether the Committee will still meet as scheduled.

Mr. Dominique Perben: I believe that faced with this kind of situation, one should remain very dispassionate. First of all, I have been here in the Territory for a number of days and I have met farmers from the north-western part of Grande Terre, so I have been looking at the problems of agriculture and drought. Since then, at the invitation of Mr. Richard Kaloi, I went to the Loyalty Islands - I had more or less given him my word that I would - and I was extremely impressed by the welcome extended to me in Lifou - not to me as an individual of course but rather to the government officials as a group and to myself in my capacity as Minister. We held extremely interesting discussions not only with the customary leaders but also with elected officials on the development of the island and other matters. In addition, as you know, since Friday, I have met delegations from different political movements and in particular the Rassemblement pour la Calédonie dans la République (RPCR) and the various elements of the FLNKS. We addressed a number of important issues which are key issues for the future.

So now, in reply to your question as to my frame of mind with regard to this Committee.

I think we are now entering an election period, as everyone knows, which may be a bit inconclusive for the next six months. In my view, as I have tried to convey on many occasions, it is important to establish from now certain priorities, to work out certain guidelines to save time, because I am convinced that things will not pick up seriously until September or October 1995 and, at that point, we would have only two years left to make preparations for the elections in 1998.

My intention this morning, as I mentioned in previous discussions, is to propose that we outline a discussion method for the post-election period. That is my first point, and it is a point that I consider very important for a

monitoring committee and it is a strong political point which deserves the attendance of everyone in this Committee.

The second purpose of the Committee, in my mind, is to make headway with certain projects that are already well under way. There is the development agency, which we will be visiting tomorrow, but there is also the question of nickel, the electricity issue, the question of air transport. There are a number of things that we should do. We should also address the question of the port facilities and the airport. So you can see that we have a whole series of issues which should be discussed now because I know that it will be more difficult in the coming weeks and even up to July - life is like that - and elections are a constraint, as everyone knows, that's what democracy is all about and I am afraid that in the space of six months, we will hardly be able to make any progress on these issues. So I should really have liked us to be able to make some progress over the next two days with all the participants together. Of course, I am still open to discussion. I am convinced that I shall be pursuing my contacts - which, if I may be so bold, are good on a human level, that is, in terms of public relations - within the monitoring committee, as well as outside.

Nicole Waia: What is your reaction to the FLNKS decision to boycott the meeting of the Committee? Are you going to maintain this Committee, excuse me but you were speaking precisely of the electoral period, will this Committee be of any value since it is meeting in the middle of an electoral campaign?

Dominique Perben: What will be of value will be the decisions we take. My personal feeling is that it is better to come to the table to take decisions than to remain outside. This being the case, I respect the decisions of each party. These are political choices; it is for the leaders of the FLNKS to decide whether it is the best political strategy to leave their seat empty just two and a half months from the presidential elections at a time when everyone knows perfectly well that a new president of the Republic is going to set up a new majority, a new government. I was foolish enough to think, on the contrary, that we should be in a phase of intensive negotiations rather than refusing not to discuss but to participate formally in meetings. This is not a refusal to talk, because yesterday I spent two hours with the FLNKS; we spent five minutes on the announcement of their non-participation for this morning. Obviously, we did discuss a lot of other issues and that's fine, I am prepared to continue to do so.

But that was a political act, it is not for me, as Minister, to interpret it; I am simply carrying on with my trip, whatever form the discussions may take. I am obviously going to continue to discuss with all who wish to do so. For my part, I am available, my door is open. Whoever wants to talk with me may do so, and not for the sake of talking with me but with a view to making progress on the issues. That is my approach and, once again, I believe, as you have suggested yourself, that it is all more or less linked to the electoral period because each side wants to take a stance.

Nicole Waia: Well, when you arrived, you spoke of readjustment and modernization and yet - I think that you were expecting this question - the French Government has just taken a decision aimed at authorizing the

establishment of a second casino in Nouméa, which is appalling for a town of 70,000 inhabitants, and certainly the only example of its kind in the whole of France. This decision was taken in Nouméa, so the order was signed at a time when a delegation from the FLNKS was in Paris to discuss contentious issues including that of gambling. So as you can see, Mr. Minister, through this measure, you are depriving this single structure - SOFINA, to avoid naming it, which was itself the result of restructuring - the financial means of pursuing this policy of readjustment. There is a certain element of contradiction there. How do you explain this?

Mr. Perben: My understanding of the issue is not at all the same as yours, Madam, and that should come as no surprise to you. First of all, with respect to the decision, let us be clear, I don't think that we should delude ourselves: the real decision was taken when it was decided to construct the Meridien Hotel and the Casino. It's not the administrative authorization to open the door that matters, it's the investment decision for the building and everything in it. That decision was taken in 1992, I was not in the Government at the time, the majority was different then. And as I recall, the two provinces, the North and the Loyalty Islands, are shareholders in these projects. So I find it surprising that today a problem is being raised that had been decided virtually on a joint basis because, when you are a shareholder in a company, you generally know what is happening in that company. So I think that the way things are being presented is not very accurate. Therefore, my concern now is not to prevent an investment that was decided earlier, which was made tax-exempt, I don't hesitate to say it, by the then socialist Government because there were tax-exempt funds invested in the project, so it is not going to be disclosed now. It's a decision that dates back to 1992, so that's the question that I am raising today and that is what I should like to discuss with the authorities.

In particular, when considering North province or the semi-public companies that depend on the province, we have to consider how to manage the economic impact, if any, and think about what we need to do to develop tourism in New Caledonia. I should like to remind you that, since we decided to open our airspace, the number of tourists has been growing. So we should stop thinking in terms of a fixed structure or population: what we need to do is attract more tourists, see how the structures that depend on North province can find a different economic balance and, to this end, as I have already told my interlocutors and now confirm on your radio station, the State is ready to take on responsibilities and assist the economic officials of this group to, I should say, forge ahead in sound economic conditions and to promote the tourist industry in New Caledonia as a whole, especially in North province, since what we are talking about is, first of all, the capacity to invest in the north.

Nicole Waia: Well, it's true that you mentioned 1992. Everyone was more or less well informed about this project but, if I am not mistaken, at the time, it had been agreed in discussions that SOCABA, which nevertheless profits from the Société touristique, should have a majority on the board of directors. Now, what happened after that was that discussions were held and one of the parties, Mr. Lafleur, refused to accept this discussion and proposed that SOCABA's share should be 20 per cent. So, isn't there a contradiction here too?

Mr. Perben: You know, it's not my place to discuss matters of a financial nature, since this kind of question is so ambiguous and mixes public and private interests. I am not in a position to pass judgement on discussions in which I did not take part, which I didn't witness and about which I received no report. What I do know is that discussions are possible. As far as the State is concerned, the State is prepared to provide assistance in different ways, and I am absolutely convinced that, with a dynamic tourist policy, the economic balances can be completely maintained and, I may add, the opening is not going to take place immediately. The administrative delay is four months, as far as I know, and in addition there will be physical and material delays, so it will be about six months before anything happens. We have plenty of time to resume our discussions, to think, to consider the wishes of the various groups concerned, whether these be hotel groups or groups with ties to North province, and to come up with concrete, practical and intelligent solutions. I think that, in this matter, what we need, you see, is to try to be intelligent and think first of the Territory of New Caledonia.

Nicole Waia: Well then, let's get to politics. With the elections coming up, haven't you yielded to the demands of Jacques Lafleur, as was the case in 1988 with all the consequences that that implies?

Mr. Perben: Do you think that we're going to continue to reduce the political life of New Caledonia to the opening of the casino? We should maintain our sense of proportion, after all.

Nicole Waia: No, I don't think so, Sir.

Mr. Perben: Yes, but that's what we've been doing for the last 15 minutes.

Nicole Waia: But you know very well that this is a political issue; the proof is that it has been dealt with only by Mr. Lafleur and not by any of the Méridien shareholders.

Mr. Perben: It has been dealt with by a number of people who know the business; that's quite clear. I act in accordance with what I believe to be the development situation of New Caledonia, not in order to fulfil the wishes of one group or another and, in future as in the past, rest assured, I will say that there'll be something for everyone. What I mean is that some of the decisions that I take won't necessarily please some people.

Nicole Waia: Sir, you mentioned just a moment ago that a major concern of all New Caledonians is the institutional future of this country. In this regard, you told Les Nouvelles Calédoniennes that discussions wouldn't be held until after the elections. What if, because of all the problems that we've just been talking about, FLNKS decides to boycott the elections? If that happens, Sir, to get back to the casino, why was it necessary to come up with the decree so hastily and to pass it? Excuse me, but what was there to prevent the Government from waiting until the FLNKS delegation returned. In fact, why couldn't you wait until the matter came before the Committee to Monitor the Matignon Accords?

Mr. Perben: Yes, it was discussed in Paris. Now let's be completely fair in our presentation of the facts. Let me tell you something. If we want - and I

think everyone wants - private investors to be interested in New Caledonia, do you think that the best course of action is to halt work on the first major project, to leave the door closed, after we've given people the go-ahead and made part of the funds tax-exempt? If we do that, do you think that there'll ever be another investor? I think that, if we want to kill development in the Territory, that is just the way to do it. Because, if we create administrative instability or legal instability for investors interested in the Territory of New Caledonia, that might please some politicians but probably won't please young people looking for jobs. So I think that, in this matter, people should act responsibly. For my part, that's what I've done. I've acted the way I have because I'm convinced that it is in the interest of the Territory of New Caledonia as a whole. Just as tomorrow, I am ready to take decisions that won't please anyone except those who are dissatisfied today, because that's my job and that's what has been done in the past. The role of the State is not necessarily to please everyone at the same time; to begin with, in general that's not possible. My job is to take decisions that promote the development of New Caledonia and that allow us to forge ahead. This is the real issue in the debate. So, while there may, of course, be problems in the time-table - I know that right now everyone is thinking about elections, be they presidential, municipal or provincial. The fact remains, however, that what we need to do is make our tourist industry a success. That is, moreover, one of the issues I want to bring up in the Committee, the additional improvements that need to be made in air service. For example, that's what Air Calédonie is doing with Japan. That's a good way of bringing more Japanese to New Caledonia.

These in my view, are the real issues of the future, and I can't help thinking that the people of New Caledonia are more interested in economic potential than in conflicts that at times seem to me to be somewhat political.